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Promotion and protection of human rights:
(a) Implementation of human rights instruments

Report of the United Nations High Commissioner for Human Rights on the equitable geographical distribution in the membership of the human rights treaty bodies

I. Introduction

1. In its resolution 63/167 on equitable geographical distribution in the membership of the human rights treaty bodies, the General Assembly encouraged States parties to the United Nations human rights instruments to consider and adopt concrete actions, inter alia, the possible establishment of quota distribution systems by geographical region for the election of the members of the treaty bodies, thereby ensuring the paramount objective of equitable geographical distribution in the membership of those bodies. In the same resolution, the Assembly called upon the States parties to include in their work a debate on ways and means to ensure equitable geographical distribution in the membership of the human rights treaty bodies. The Assembly also recommended, when considering the possible establishment of a quota by region for the election of the membership of each treaty body, the introduction of flexible procedures encompassing three criteria: (a) each of the five regional groups established by the Assembly must be assigned a quota of the membership of each treaty body in equivalent proportion to the number of States parties to the instrument that it represents; (b) there must be provision for periodic revisions that reflect the relative changes in the geographical distribution of States parties; and (c) automatic periodic revisions should be envisaged in order to avoid amending the text of the instrument when the quotas are revised. The Assembly stressed that the process needed to achieve the goal of equitable geographical distribution in the membership of the treaty bodies could contribute to raising awareness of the importance of gender balance, the representation of the principal legal systems and the principle that the members of the treaty bodies should be elected and serve in their personal capacity and be of high moral character, acknowledged impartiality and recognized competence in the field of human rights.

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2. The chairpersons of the human rights treaty bodies were requested to consider the content of the resolution at their annual meeting, and to submit through the United Nations High Commissioner for Human Rights specific recommendations for the achievement of the goal of equitable geographical distribution in the membership of the human rights treaty bodies. The High Commissioner was requested to submit concrete recommendations on the implementation of the resolution to the General Assembly at its sixty-fourth session.

3. The present report, which updates the report on equitable geographical distribution in the membership of the human rights treaty bodies, providing an analysis on the membership of those bodies from 1970 to 2005 (A/60/351), is submitted in response to the requests of the General Assembly.

II. Human rights treaty bodies

4. Eight of the nine international human rights treaties currently in force provide for creation of a committee of experts to carry out functions delineated in the treaty, and, where relevant, its optional protocols. Accordingly, the Committee on the Elimination of Racial Discrimination, established under the International Convention on the Elimination of All Forms of Racial Discrimination, began work in 1970; the Human Rights Committee, established under the International Covenant on Civil and Political Rights, began work in 1977 and is invested with functions by the Covenant and its two Optional Protocols; the Committee on the Elimination of Discrimination against Women, established under the Convention on the Elimination of All Forms of Discrimination against Women, began work in 1982 and is invested with functions by the Convention and its Optional Protocol; the Committee against Torture, established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, began work in 1987; the Committee on the Rights of the Child began work in 1991 and oversees implementation of the Convention on the Rights of the Child and its two Optional Protocols; the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, established under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, began work in 2004; the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, established under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, began work in 2007; and the Committee on the Rights of Persons with Disabilities, established under the Convention on the Rights of Persons with Disabilities, began work in 2009 and oversees implementation of the Convention and its Optional Protocol.

5. The International Covenant on Economic, Social and Cultural Rights does not provide for the creation of a treaty body, but gives the Economic and Social Council a general mandate to oversee implementation of the Covenant by States parties and United Nations specialized agencies through consideration of reports. In 1978, the Council created a Sessional Working Group of Governmental Experts on the implementation of the Covenant to assist it in considering the reports submitted by States parties (decision 1978/10). The composition of the Sessional Working Group was amended by the Council in 1985 (resolution 1985/17) and the Group was renamed the Committee on Economic, Social and Cultural Rights. The Committee, which is treated as a treaty body, first met in 1987. A resolution adopted by the

Human Rights Council has called for the regularization of the Committee so that its establishment is consistent with other treaty bodies (Human Rights Council resolution 4/7).

6. The International Convention on the Protection of All Persons from Enforced Disappearance, which is currently open for signature, accession and ratification, but yet to enter into force, also provides for the creation of a committee to carry out monitoring functions.

III. Election of members of human rights treaty bodies

7. Except in the case of elections of members of the Committee on Economic, Social and Cultural Rights, which are governed by Economic and Social Council resolution 1985/17, the elections of the members of the treaty bodies are governed by provisions set out in each treaty (art. 8, International Convention on the Elimination of All Forms of Racial Discrimination; arts. 28-34, International Covenant on Civil and Political Rights; art. 17, Convention on the Elimination of All Forms of Discrimination against Women; art. 17, Convention against Torture; art. 43, Convention on the Rights of the Child; art. 72, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; arts. 5-9, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; art. 34, Convention on the Rights of Persons with Disabilities).

8. In accordance with these provisions, each Committee is composed of independent experts, ranging in number from 10 to 23, with provisions for expansion of membership being included in several treaties (up to a maximum of 14 under art. 72, para. 1 (b) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; up to a maximum of 25 under art. 5, para. 1, of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and up to a maximum of 18 under art. 34, para. 2, of the Convention on the Rights of Persons with Disabilities). Experts are nominated and elected by States parties to the treaty concerned by secret ballot. They serve for four-year terms, and, except in the case of the Subcommittee on Prevention and the Committee on the Rights of Persons with Disabilities, which allow for renomination of members once only, the treaties do not limit the number of times a member's term may be renewed. Most treaties provide that nominees must be nationals of the nominating State party. With the exception of the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which allow for the nomination of two candidates by the State party, all treaties limit the number of nominees to one. Candidates must be nationals of the nominating State party, except in the case of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which entitles States parties to nominate a candidate who is a national of another State party where it nominates two candidates. The other candidate must be a national of the nominating State party, and before it nominates a national of another State party, the nominating State must obtain the consent of the other State party (art. 6).

9. Where the Committee on Economic, Social and Cultural Rights is concerned, Economic and Social Council resolution 1985/17 provides that the Committee shall consist of 18 members who shall be elected by the Council by secret ballot from a list of persons nominated by States parties to the Covenant. Members serve for four-year terms and are eligible for re-election if nominated. The elections of members in respect of all other treaty bodies take place at biennial meetings of the States parties, or in the case of the Committee on the Rights of Persons with Disabilities, Conference of States Parties, of the treaty concerned. In all cases, in order to avoid the change of the entire membership, the terms of half of the members elected at the first elections are limited to two years, following which elections occur every two years.

A. Qualification for nomination as members

10. The qualifications expected of nominees set out in the treaties and Economic and Social Council resolution 1985/17 vary. In general, members are required to be of recognized competence and of high moral standing and acknowledged impartiality. The International Covenant on Civil and Political Rights also indicates that consideration should be given to the usefulness of the participation of some persons having legal experience (art. 28, para. 2), while the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment provides that in nominating candidates, States parties should bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee and who are willing to serve on the Committee against Torture (art. 17, para. 2). The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment indicates that members should have proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to persons deprived of their liberty (art. 5, para. 2). In the case of the Committee on the Rights of Persons with Disabilities, States parties are invited to give due consideration to article 4, paragraph 3, when nominating candidates (art. 34, para. 3). This requires States parties to closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations in the development and implementation of legislation and policies to implement the Convention and other decision-making processes concerning issues relating to persons with disabilities. All treaties, as well as Council resolution 1985/17, indicate that members serve in their personal capacity.

B. Criteria for election

11. The treaties, and Economic and Social Council resolution 1985/17, provide criteria for States in election of members. In all cases, consideration must be given to equitable geographical distribution. Additional considerations include representation of the principal legal systems (Conventions on the: Elimination of Racial Discrimination; Elimination of All Forms of Discrimination against Women; Rights of the Child; Rights of Persons with Disabilities), the different forms of social and legal systems (Committee on Economic, Social and Cultural Rights), the different forms of civilization (Conventions on the: Elimination of Racial Discrimination; Elimination of All Forms of Discrimination against Women; Rights of Persons with Disabilities), different forms of civilization and legal systems of the

States parties (Optional Protocol to the Convention against Torture) or the usefulness of legal experience (International Covenant on Civil and Political Rights; Convention against Torture).

12. The newer treaties provide explicit provisions relating to gender balance. Thus, in the composition of the Subcommittee on Prevention, due consideration is to be given to "balanced gender representation on the basis of equality and non-discrimination" (art. 5, para. 4). Where the Committee on the Rights of Persons with Disabilities is concerned, States parties are also required to give consideration to balanced gender representation and participation of experts with disabilities. The International Convention for the Protection of All Persons from Enforced Disappearance also requires due account to be taken of balanced gender representation (art. 26, para. 1).

13. Allocation of membership on a regional basis applies only in the case of the Committee on Economic, Social and Cultural Rights, with Economic and Social Council resolution 1985/17 providing that 15 seats on the Committee will be equally distributed among the regional groups, while the additional 3 seats will be allocated in accordance with the increase in the total number of States parties per regional group.

C. Replacement of members

14. Provisions relating to the replacement of members who resign or cannot continue as members before the end of their term are contained in all the treaties. In most cases, the State party that nominated the member appoints another expert from among its nationals to fill the vacancy for the remainder of the term, subject in some cases to the approval of the relevant treaty body (Committees on: the Elimination of Racial Discrimination; the Elimination of Discrimination against Women; the Rights of the Child; Migrant Workers). In the Committee against Torture this is subject to the approval of other States parties. Replacement in these cases has no impact on the geographical distribution of the membership on the treaty body concerned. Where the Human Rights Committee is concerned, article 34 of the International Covenant on Civil and Political Rights requires an election in the case of a vacated membership, provided that the term has at least six months to run. Although this may result in a change in the geographical composition of the Committee, in practice, the nationality of the member has changed only once on the occasions that members of the Committee have been replaced, with the replacement being from the same regional group as the original member.

D. Membership of the treaty bodies

15. Since 1 January 2006, 188 individuals have served as members of treaty bodies, with 63 serving consecutive terms. A total of 26 individuals from 21 States have served on the Committee on the Elimination of Racial Discrimination, 28 individuals from 24 States parties have served on the Human Rights Committee, 37 individuals from 31 States parties have served on the Committee on the Elimination of Discrimination against Women, 13 individuals from 10 States parties have served on the Committee against Torture, 28 individuals from 28 States parties have served on the Committee on the Rights of the Child, 22 individuals from 19 States parties have served on the Committee on Economic, Social and Cultural

Rights, 12 individuals from 11 States parties have served on the Committee on Migrant Workers, 10 individuals from 10 States parties have served on the Subcommittee on Prevention, and 12 individuals from 12 States parties have served on the Committee on the Rights of Persons with Disabilities. Of these, 41 have come from Africa, 39 from Asia, 23 from Eastern Europe, 36 from Latin America and the Caribbean and 49 from the Western European and Others Group. The membership of each treaty body per regional group as recognized by the General Assembly, in comparison with the ratification per regional group calculated at the time of the most recent election to the treaty body concerned, is contained in table 1.

Table 1
Ratifications and membership of treaty bodies according to Regional Group

	Ratifications[a] *(percentage)*	*Committee*[b] *(percentage)*
Committee on the Elimination of Racial Discrimination		
Last election of members held on 17 January 2009		
Total number of ratifications at the time of the election: 173		
Africa	27.7	27.8
Asia	23.7	16.7
Eastern Europe	13.3	11.1
Group of Latin American and Caribbean States	17.9	16.7
Western European and Others Group	17.3	27.8
Human Rights Committee		
Last election of members held on 4 September 2008		
Total number of ratifications at the time of the election: 162		
Africa	30.9	33.3
Asia	19.7	11.1
Eastern Europe	14.2	5.5
Group of Latin American and Caribbean States	17.3	16.7
Western European and Others Group	17.9	33.3
Committee on Economic, Social and Cultural Rights		
Last election of members held on 29 April 2008		
Total number of ratifications at the time of the election: 158		
Africa	30.4	22.2
Asia	20.9	22.2
Eastern Europe	14.6	16.7
Group of Latin American and Caribbean States	17.1	16.7
Western European and Others Group	17.1	22.2
Committee on the Elimination of Discrimination against Women		
Last election of members held on 30 July 2008		
Total number of ratifications at the time of the election: 185		
Africa	27.0	22.7
Asia	28.1	27.2

	Ratifications[a] *(percentage)*	*Committee*[b] *(percentage)*
Eastern Europe	12.4	13.6
Group of Latin American and Caribbean States	17.3	13.6
Western European and Others Group	15.1	22.7
Committee against Torture		
Last election of members held on 8 October 2007		
Total number of ratifications at the time of the election: 145		
Africa	31.0	20
Asia	17.9	20
Eastern Europe	15.2	10
Group of Latin American and Caribbean States	15.2	20
Western European and Others Group	20.7	30
Committee on the Rights of the Child		
Last election of members held on 16 December 2008		
Total number of ratifications at the time of the election: 193		
Africa	26.3	33.2
Asia	27.9	16.7
Eastern Europe	11.9	16.7
Group of Latin American and Caribbean States	18.9	5.6
Western European and Others Group	15.0	27.8
Committee on the Rights of Migrant Workers		
Last election of members held on 6 December 2007		
Total number of ratifications at the time of the election: 37		
Africa	35.1	30
Asia	20	20
Eastern Europe	8.1	10
Group of Latin American and Caribbean States	35.1	30
Western European and Others Group	2.7	10
Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		
Last election of members held on 30 October 2008		
Total number of ratifications at the time of the election: 35		
Africa	14.3	0
Asia	5.7	0
Eastern Europe	31.4	30
Group of Latin American and Caribbean States	28.6	40
Western European and Others Group	20	30
Committee on the Rights of Persons with Disabilities		
Last election of members held on 3 November 2008		
Total number of ratifications at the time of the election: 25		
Africa	28	16.7

	Ratifications[a] *(percentage)*	*Committee*[b] *(percentage)*
Asia	8	33.3
Eastern Europe	12	16.7
Group of Latin American and Caribbean States	40	16.7
Western European and Others Group	12	16.7

[a] Ratio of ratifications of countries in the regional group to the total number of ratifications at the time of the most recent election to the treaty body concerned.

[b] Present ratio of Committee members representing countries in the regional group to the total number of Committee members.

During this period, men have continued to outnumber women as treaty body members (see table 2).

Table 2
Gender composition of treaty bodies, 2006-2009

Committee	*Gender*	*2006*	*2007*	*2008*	*2009*
Committee on the Elimination of Racial Discrimination	Male	16	16	17	17
	Female	2	2	1	1
	Total	**18**	**18**	**18**	**18**
Human Rights Committee	Male	15	13	13	13
	Female	3	5	5	5
	Total	**18**	**18**	**18**	**18**
Committee on Economic, Social and Cultural Rights	Male	13	14	14	15
	Female	4	4	4	3
	Total	**17**	**18**	**18**	**18**
Committee on the Elimination of Discrimination against Women[a]	Male	1	1	1	2
	Female	22	22	21	20
	Total	**23**	**23**	**22**	**22**
Committee against Torture	Male	7	7	6	6
	Female	3	3	4	4
	Total	**10**	**10**	**10**	**10**
Committee on the Rights of the Child	Male	9	8	9	9
	Female	9	10	10	9
	Total	**18**	**18**	**19**	**18**

Committee	*Gender*	*2006*	*2007*	*2008*	*2009*
Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families	Male	8	8	7	7
	Female	2	2	3	3
	Total	**10**	**10**	**10**	**10**
Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Male	—	8	8	8
	Female	—	2	2	2
	Total	—	**10**	**10**	**10**
Committee on the Rights of Persons with Disabilities	Male	—	—	—	7
	Female	—	—	—	5
	Total	—	—	—	12

[a] The Committee is comprised of 23 members. In 2007, one of its members resigned and the nominating State has yet to nominate a substitute member.

E. Chairpersons of the human rights treaty bodies

16. At their twenty-first meeting, in July 2009, the chairs of the human rights treaty bodies considered General Assembly resolution 63/167. The chairs noted the importance of the issue and took account of the current membership of the treaty bodies, identifying some trends, including the absence of Asian and African members on the Subcommittee on Prevention, and the limited number of members from Eastern Europe in various treaty bodies. However, the chairs stressed that nomination and election of treaty body members was regulated by the various treaties or, in the case of the Committee on Economic, Social and Cultural Rights, resolution 1985 of the Economic and Social Council, and was the responsibility of States parties.

17. The chairs recommended that States parties, when nominating and electing members of the treaty bodies, should take into account the provisions set out in the legally binding human rights instruments to this effect. States parties should give due consideration to equitable geographical distribution, independence of experts, representation of different forms of civilization and legal systems, balanced gender representation and expertise from various professional fields.

IV. Conclusion

18. **Under the terms of the eight human rights treaties currently in force that establish a treaty body, the modalities for the nomination and election of treaty body members is a matter for the States parties. Where the Committee on Economic, Social and Cultural Rights is concerned, the nomination of candidates for election is a matter for States parties, whereas election is a**

matter for the members of the Economic and Social Council, with geographical distribution being subject to Council resolution 1985/17.

19. **The United Nations High Commissioner for Human Rights recommends that States parties apply the provisions relating to nomination and election of treaty body members in the human rights treaties, as well as Economic and Social Council resolution 1985/17, when nominating and electing members.**

20. **The High Commissioner also recommends that the present report be forwarded to the chairs of the meetings or conferences of States parties, as well as the Economic and Social Council, for the consideration of those forums during their next meetings.**

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Item 71 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Human rights of migrants

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, submitted in accordance with Assembly resolution 63/184 and Human Rights Council resolution 8/10.

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Report of the Special Rapporteur on the human rights of migrants

Summary

The present report, on activities carried out between January 2008 and June 2009, is submitted pursuant to General Assembly resolution 63/184 and Human Rights Council resolution 8/10. The report summarizes the activities undertaken by the Special Rapporteur on the human rights of migrants during the period under review and highlights a number of issues in focus related to the protection of the human rights of migrants, including the protection of children in the context of migration, a number of illustrative good practices and some of the major challenges encountered in the protection of the human rights of migrants, which he deems worthy of special attention.

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I. Introduction

1. The present report has been submitted to the General Assembly by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, pursuant to Assembly resolution 63/184, entitled "Protection of Migrants", and Human Rights Council resolution 8/10, entitled "Human rights of migrants: mandate of the Special Rapporteur on the human rights of migrants".

2. In the present report, the Special Rapporteur provides a summary of his activities carried out between January 2008 and June 2009 and highlights issues related to the protection of children in the context of migration, a number of illustrative good practices and some of the major challenges encountered in the protection of the human rights of migrants.

II. Activities of the Special Rapporteur

3. The Special Rapporteur carries out his activities in accordance with Human Rights Council resolution 8/10. Human Rights Council resolutions 9/5 and S-10/1 and Assembly resolutions 62/156 and 63/184 provide further thematic guidance for the activities of the Special Rapporteur.

4. During the reporting period, the Special Rapporteur participated in a number of events, as set out below:

(a) On 6 March 2008, the Special Rapporteur participated in an event on the theme "Challenges of irregular migration", organized by the Office of the High Commissioner for Human Rights and the Geneva Office of the Friedrich Ebert Foundation in parallel with the seventh session of the Human Rights Council;

(b) From 1 to 3 June 2008, the Special Rapporteur participated in a training programme on international and regional human rights systems organized in Sweden by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and the Inter-American Institute for Human Rights;

(c) From 23 to 27 June 2008, the Special Rapporteur attended the fifteenth meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Human Rights Council, held in Geneva, and participated in the drafting of the report submitted to the Council at its tenth session (A/HRC/10/24). He also participated in a seminar on the theme "Working with the United Nations special procedures system to fight torture and other forms of ill-treatment by acting on their economic, social and cultural root causes", organized by the World Organization Against Torture in Geneva;

(d) From 30 July to 2 August 2008, the Special Rapporteur participated in a workshop on the theme "Immigration and integration", organized by the University of Jaén, Spain;

(e) From 24 to 26 August 2008, the Special Rapporteur participated in the regional conference for Africa, held in Abuja, as part of the preparations for the Durban Review Conference, held in Geneva in April 2009;

(f) From 11 to 13 September 2008, the Special Rapporteur participated in the third World Social Forum on Migration, held in Rivas-Vaciamadrid, Spain;

(g) On 30 September and 1 October 2008, the Special Rapporteur attended the International Meeting on the Protection of the Rights of Children in the Context of International Migration, held in Mexico City and organized by the Office of the United Nations High Commissioner for Human Rights and the Government of Mexico;

(h) On 24 and 25 October 2008, the Special Rapporteur participated, together with the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, in the 2008 joint regional consultation on migrant domestic workers, organized by the Asia Pacific Forum on Women, Law and Development, the Coordination of Action Research on AIDS and Mobility and the Global Alliance Against Traffic in Women, held in Manila;

(i) From 27 to 29 October 2008, the Special Rapporteur attended the second Global Forum on Migration and Development, held in Manila;

(j) On 7 November 2008, the Special Rapporteur participated in the fifth International Congress on Migration, organized by Rafael Landívar University and the Jesuit Migrant Service, in Guatemala City;

(k) On 13 November 2008, the Special Rapporteur participated in the 2008 Robert G. Mead, Jr., Lecture at the Centre for Latin American and Caribbean Studies at the University of Connecticut, Hartford, United States of America;

(l) On 18 November 2008, the Special Rapporteur attended a working group on United States-Mexico migration, held at the Woodrow Wilson International Centre for Scholars, in Washington, D.C.;

(m) From 20 to 24 April 2009, the Special Rapporteur participated in the Durban Review Conference, held in Geneva, pursuant to Assembly resolution 61/149;

(n) On 24 April 2009, the Special Rapporteur participated in an event on the theme "Migration, discrimination and economic, social and cultural rights", held in parallel with the Durban Review Conference and organized by the Office of the United Nations High Commissioner for Human Rights, with the participation of the International Labour Organization, the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration;

(o) On 2 and 4 June 2009, the Special Rapporteur participated as an invited guest in events on the theme "The global economic crisis: implications for migration and development" and "Migrant children — unprotected and neglected in migration policies?", held in parallel with the eleventh session of the Human Rights Council and organized by Migration Forum Asia, Migrants Rights International, Platform for International Cooperation on Undocumented Migrants and National Network for Immigrant and Refugee Rights;

(p) On 3 June 2009, the Special Rapporteur participated as an invited guest in an event on the theme "Migrant domestic workers forging ahead towards an ILO convention: challenges and opportunities", held in parallel with the eleventh session of the Human Rights Council and organized by Migration Forum Asia, Migrants Rights International and the Asian Migrant Domestic Workers Alliance. Also on 3 June, he participated in an expert meeting on migration and peace, organized by the Society for International Human Rights Law of Spain.

5. During the period under review, the Special Rapporteur issued the following statements:

(a) On 15 July 2008, the Special Rapporteur issued a joint statement with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the Independent Expert on Minority Issues, Gay J. McDougall, on the stigmatization of the Roma community in Italy;

(b) On 18 July 2008, the Special Rapporteur, together with nine other mandate holders, issued a joint statement on the European Union return directive;

(c) On 6 October 2008, the Special Rapporteur, together with 12 other mandate holders, issued a joint statement on the occasion of Dignity and Justice for Detainees Week;

(d) On 18 December 2008, on the occasion of the celebration of International Migrant's Day, the Special Rapporteur issued a joint statement with the Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Abdelhamid El Jamri, calling for wider ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

A. Communications with Member States

6. The Special Rapporteur continued to receive information about the situation of migrants worldwide and to exchange communications with Governments. A summary of the communications sent in the period from January 2008 to March 2009, together with Government replies, was included as an addendum to the 2009 annual report, submitted to the Human Rights Council at its eleventh session (A/HRC/11/7/Add.1).

7. The report shows that, in situations where violations of the human rights of migrants are alleged to have occurred, allegations have included: (a) arbitrary detention and incommunicado detention of migrants; (b) repatriation of migrants facing the threat of torture in countries of origin; (c) racism, xenophobia, discrimination and related intolerance against migrants; (d) threats to the life and the physical and personal security of migrants; (e) summary executions; (f) disproportionate use of force by law enforcement officials towards persons attempting to cross borders; (g) expulsion of migrants married to nationals; (h) torture and other cruel, inhuman or degrading treatment or punishment; (i) threats to freedom of association, including the right to form and join trade unions; (j) collective deportations and collective expulsions; (k) enforced disappearances; and (l) violence against migrant women.

8. The Special Rapporteur would like to thank the Governments of Belgium, France, Guatemala, the Islamic Republic of Iran, Italy, Japan, Mexico, Panama, Saudi Arabia and Spain for their collaboration in responding to his communications and to remind Governments that have not responded to do so and to address all concerns raised in each communication.

9. A report on further communications exchanged with Governments will be submitted at a forthcoming session of the Human Rights Council.

B. Country visits

10. During the period under review, the Special Rapporteur visited Mexico (9 to 15 March 2008), Guatemala (24 to 28 March 2008), Romania (15 to 20 June 2009) and the United Kingdom of Great Britain and Northern Ireland (22 to 26 June 2009). In 2009, the Special Rapporteur also plans to visit Senegal, at the invitation of the Government.

Mexico

11. The Special Rapporteur undertook an official visit to Mexico from 9 to 15 March 2008. His country visit report is contained in an addendum to his report to the Human Rights Council at its eleventh session (A/HRC/11/7/Add.2).

12. In his report, the Special Rapporteur referred to Mexico as a country of regional migration flows to the United States of America and from Central America, and reflected on the legal framework pertaining to the human rights of migrants at the federal level, underscoring gaps in the implementation of existing laws and noting problematic policies. He also analysed issues related to various groups reflected in the Mexican migrant phenomenon, including the Mexican diaspora and deportees from the United States, migrant workers, migrant children, including unaccompanied minors, child labourers and migrant women. Subsequently, he drew attention to key migration challenges, including assistance to migrants, as well as border control and the detention of migrants, organized crime networks and impunity for violators of human rights of migrants and corruption among judicial law enforcement officials.

13. The Special Rapporteur also highlighted some of the efforts made by Mexican authorities to improve the handling of detention centres (especially overcrowding), the training of border officials, return and the protection of children. Among his concerns, the Special Rapporteur noted reports of impunity for instances of corruption, including bribery and extortion, violence against women and trafficking in children. The Special Rapporteur also recommended that the Government address many issues of concern that warrant further attention.

Guatemala

14. The Special Rapporteur undertook an official visit to Guatemala from 24 to 28 March 2008. His country visit report is contained in an addendum to his report to the Human Rights Council at its eleventh session (A/HRC/11/7/Add.3).

15. In his report, the Special Rapporteur referred to Guatemala as a country of origin, destination and, in particular, transit of migrants in Central America, and reflected on the national and international legal framework for the protection of migrants, as well as on the public policies and programmes put in place by the Government. He noted the interest of the Government in addressing some of the problems related to the human rights of migrants, but observed with concern that there were certain gaps and ambiguities in the legislative framework regulating migration in Guatemala.

16. The Special Rapporteur also addressed a number of issues, including, but not limited to, smuggling and trafficking in persons; unaccompanied minors; extortion and bribery in the judicial system and the police forces; the right to equality and the

principle of non-discrimination; domestic and farm workers; and the fight against impunity and the strengthening of the judiciary, with a view to appraising the situation relating to the human rights of migrants in Guatemala. He also highlighted efforts made by the Guatemalan authorities to adopt a more comprehensive approach to the management of migration and to facilitate the return to their families of non-accompanied migrant children deported from Mexico. He made some recommendations for the full realization of the human rights of migrants in Guatemala. He also commended the work accomplished by civil society and made recommendations aimed at ensuring the protection of migrants and combating impunity for violations of their human rights.

Romania

17. The Special Rapporteur undertook an official visit to Romania from 15 to 20 June 2009. During his visit, the Special Rapporteur met with representatives of a number of ministries and agencies responsible for migration governance, law enforcement, countering transnational organized crime and trafficking in persons and the protection of migrants and their families at the national and county level, including the Ministry of Foreign Affairs; the Ministry of Administration and the Interior; the Ministry of Labour, Family and Equal Opportunity; the Parliament; the National People's Advocate; and the National Council for Combating Discrimination. He also met with border control authorities and senior officials of the National Agency Against Trafficking in Persons, but regretted not having been able to interview persons benefiting from victims protection programmes. He visited Bucharest, Galati, Constanta, Tulcea, Otopeni and Pitesti. He also visited centres where foreigners in an irregular situation are accommodated and was provided access to interview some of them on a random basis.

18. At the conclusion of his visit, the Special Rapporteur highlighted labour migration as one of the key issues for domestic and foreign policy in Romania, given the fact that both immigration and outmigration have been increasing in recent years. He was further informed about two contrasting trends: the decrease in the trafficking in persons on the one hand, and the increase in the smuggling of migrant workers on the other. He noted the Government's interest in addressing some of the problems related to the human rights of migrants, but observed with concern that there were certain gaps and ambiguities in the legislative framework regulating the protection of migrant workers and expressed regret that Romania had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which had been adopted by the General Assembly in 1990. The Special Rapporteur will submit a report on his country mission to Romania to the Human Rights Council at a session in 2010.

United Kingdom of Great Britain and Northern Ireland

19. The Special Rapporteur undertook an official visit to the United Kingdom of Great Britain and Northern Ireland from 22 to 26 June 2009. During his visit, the Special Rapporteur met with representatives of a number of governmental authorities, including officials of the Foreign and Commonwealth Office and the Home Office. He also met with the Children's Commissioner for England and his deputy, as well as with a number of senior officials of the Department of Health and the Department for Children, Schools and Families. During his visit, the Special Rapporteur also met with several officials of the United Kingdom Border Agency.

He visited London, as well as Heathrow airport and the districts of Dover and Gosport. At Heathrow airport, he was given the opportunity to observe operations and was briefed on the processing of European Union and non-European Union passengers and the iris inspection, watch house, fingerprinting, photographing and screening interview processes. He also visited holding centres in terminals 1 and 2. In the districts of Dover and Gosport, the Special Rapporteur visited immigration removal centres, where he was provided with the opportunity to interview inmates charged with immigration-related offences.

20. At the conclusion of his visit, the Special Rapporteur highlighted the fact that migration is recognized as one of the great issues of our time and perceived as a highly sensitive, controversial and contentious issue at the policymaking and decision-making levels in the United Kingdom, requiring a multilateral and multidimensional approach. He noted that the Government had made a genuine effort to deliver a migration policy, ensuring its prerogative to determine the conditions of stay and removal of non-nationals while being consistent with human rights obligations, but highlighted that there seemed to be a significant number of allegations of cases of prolonged detention of irregular migrants waiting for deportation. The Special Rapporteur was encouraged by a number of good practices in the United Kingdom in relation to the treatment afforded to non-national unaccompanied minors, and invited the Government to strengthen efforts to introduce holistic age-assessment procedures in order to diminish subjective criteria for age assessment. The Special Rapporteur will submit a report on his visit to the United Kingdom to the Human Rights Council at a session in 2010.

III. Issues in focus

A. The protection of children in the context of migration

21. The Special Rapporteur submitted a thematic report to the Human Rights Council on the protection of children in the context of migration (see A/HRC/11/7), and wishes to draw the attention of the General Assembly to some of the issues that he deems to be worthy of special attention.

1. General background and protection gaps

22. The Special Rapporteur observed that children have always been part of migration and affected by it in various ways. In countries of origin, children left behind by migrant family members are affected. In countries of transit, children on the move are affected also at the pre-departure and arrival stages of the migration process. In countries of destination and host countries, migrant children are affected at the arrival, post-arrival, long-term-stay and integration stages of the process. Although migration potentially enhances a child's opportunities and future choices, many forms of migration, as well as the treatment provided to children during the migration process, can pose serious threats to children's rights.

23. The experience of migration for children may include a variety of situations. The most common way for children to move across borders is with their parents or accompanied by extended family members or other adults. However, children are also increasingly seeking migration opportunities to move across borders autonomously and unaccompanied. Children are also increasingly part of mixed

migratory flows, which are mass population movements, including of refugees, asylum-seekers, economic migrants and other migrants. Falling prey to transnational organized crime and exploitation practices, including smuggling, trafficking in persons and contemporary forms of slavery, described, in some instances, as abusive forms of migration, may be a part of the migration experience for many children.

24. Like adult migration, child migration is influenced by political, social, economic and environmental situations. These may include new global phenomena, such as climate change, the food crisis and the financial and economic crisis. Child specific phenomena, such as child abuse and domestic violence, may also influence the movement of children across borders.

25. Ensuring the protection of the child in the context of migration demands that issues related to irregular migration be considered, since they may affect the child's enjoyment of human rights. For example, the criminalization of irregular migration, an issue addressed by the Special Rapporteur in his 2008 report to the Human Rights Council (A/HRC/7/12), has proved to be at the root of ill treatment and other human rights abuses. This is of particular concern in the case of children — especially those who are unaccompanied and undocumented — in countries of transit and destination where irregular migration is punished with imprisonment, particularly when migration management policies have yet to mainstream a child rights approach.

26. The protection of children during migration necessarily implies a gender dimension, since women and girls account for almost 50 per cent of international migrants. The need to take into consideration the special vulnerability of the girl child to gender-based violence and discrimination is illustrated by, inter alia, the fact that additional restrictions on travel relating to male guardianship can have an impact on the number of girls resorting to irregular channels to migrate. The gender dimension of migration also includes issues relating to trafficking in persons for purposes of sexual exploitation, forced labour and other forms of exploitation, as well as other abuses to which the girl child is more vulnerable during migration, such as requests for sexual favours in exchange for protection or for the promise to cross borders.

27. The Special Rapporteur observes that in countries both of origin and of destination, serious concerns remain related to child labour, and he wishes to draw the attention of the General Assembly to rampant child labour practices associated, in some instances, with the lack of law enforcement in this area.

28. The Special Rapporteur also wishes to draw attention to two major gaps that he has identified in relation to the protection of the rights of migrant children. The first protection gap relates to the lack of specific provisions on children in migration laws, policies and programmes. Most migration laws do not reflect a child rights perspective, nor do they have specific provisions relating to children.

29. In the view of the Special Rapporteur, that first gap should be addressed in part by harmonizing migration laws, programmes and policies with the Convention on the Rights of the Child and other relevant international and regional human rights instruments. For example, the Special Rapporteur is informed about cases of deportation and detention where children suffer the same consequences (and receive the same treatment) as adults, which often results in children being deprived of their rights. For that reason, public policies and programmes should ensure the protection

of children from detention and deportation, and migration laws should include concrete regulations to respect children's rights and needs in such circumstances. In particular, laws should include such child rights principles as detention as a last resort; priority and alternative measures to detention; and prohibition of the deportation of unaccompanied children as a punishment for irregular migration status.

30. Incorporating a child rights perspective in migration laws, policies and programmes, together with a rights-based approach, will ensure both that the particular needs and rights of children are expressly included (the principle of "childhood integral protection" should be fully incorporated in migration law and policies) and that all human rights are recognized for all migrant children, irrespective of age, sex, nationality or migration status.

31. The second general gap concerns public policies aimed at children. In many countries, policies meant for the protection of the rights of the child (most of them based on the Convention on the Rights of the Child) have not yet taken into account the specific conditions and needs of migrant children (in the United Kingdom, civil society has highlighted the Government slogan "Every child matters" in order to advocate for the inclusion of child migrants in public policies on childhood). This gap is evident in policies concerning, inter alia, education (such as access, dropping out and language barriers), health care, birth registration, adolescent professional training and commercial sexual exploitation.

32. The Special Rapporteur deems it important to highlight a number of issues related to the protection of children in the context of migration, particularly in relation to the situation of children left behind by migrant parents, children on the move and children in host countries. He also deems it important to highlight some of the good practices that have been brought to his attention and a number of major challenges that remain to be overcome in protecting the human rights of migrants.

2. The situation of children left behind

33. The Special Rapporteur has observed that migration affects children raised in their home countries or their countries of habitual residence who have been left behind by the adult migrants responsible for them, such as one or both parents, extended family members, legal guardians or caregivers. Children in this category, commonly referred to as "children left behind", are often neglected in laws, programmes and policies dealing with children in general and migration in particular.

34. The Special Rapporteur recognizes that many factors may play a role in assessing how migration affects the rights of children left behind. Some studies document that children left behind might be at greater risk for psychosocial trauma, violent behaviour, drug abuse and teenage pregnancy, and suggest that parental absence creates additional challenges, including family instability, a greater burden on the household and social stigmatization.

35. Furthermore, social policies in countries of origin or residence — for example, the kind of social support available for the protection of children — and the specific living situation of the child in his or her country of origin or residence are key factors in determining the impact of migration on children left behind. Furthermore, many parents and other family members initially migrate without children, but

subsequently plan to bring them to a host country. It is therefore important that States of origin develop policies and strengthen bilateral, regional and international cooperation to reduce the number of unaccompanied children seeking to join their parents or other family members in host countries through irregular channels.

36. Gender is also one of the factors that may play a role in determining how migration affects the rights of children left behind. Research studies carried out in the Latin American region, for example, suggest that children left behind may be affected differently by the absence of their mother compared with the absence of their father, given that when a family member migrates, relations are redefined and subsequent changes in roles and responsibilities affect the daily life of the child. Furthermore, studies conducted by the International Labour Organization in Tajikistan suggest that the prolonged absence of the male head of household often leaves the rest of the family destitute.

37. The Special Rapporteur continues to receive information about instances in which children left behind are obliged to take on huge tasks inappropriate to their age or are subjected to physical, psychological or sexual abuse by the relatives or neighbours to whom they have been entrusted during their parents' absence. The Special Rapporteur has also been informed of instances in which households have endured increased economic and psychological vulnerabilities, such as families left behind being weighed down by debt, exploited by moneylenders and vulnerable to pressure from and control by relatives because of their dependency on remittances.

38. The Special Rapporteur wishes to draw the attention of States to the need to protect children left behind, and strongly recommends that the situation of children staying behind in countries of origin be included on the agenda in international debates and forums on migration issues. The Special Rapporteur also encourages all relevant actors to undertake further studies to better understand the impact of migration processes on the well-being and enjoyment of human rights of children left behind in countries of origin. He also recommends the compilation and sharing of best practices in addressing the situation of children left behind in countries of origin, especially in the area of education.

39. The Special Rapporteur further encourages States to develop public policies to address the situation of children left behind in countries of origin, taking into account the best interests of the child as a guiding principle and ensuring the participation of such children in the design and implementation of those policies. He also encourages States to develop public policies to prevent the irregular migration of children and to undertake public information campaigns in communities of origin to alert them to the dangers of irregular migration and to inform them of existing protection mechanisms.

3. The situation of children on the move

40. The Special Rapporteur observes that children may be found "on the move" in a wide variety of circumstances, in particular at the passage and arrival stages of migration in countries of transit and destination. Children migrate with family members or independently, to seek both educational and employment opportunities. They may also be rejoining migrant members of the family or be in the process of being relocated or sent by families to stay with relatives or friends in third countries. Children may also be forcibly on the move, such as when they fall prey to

transnational organized crime and exploitation networks or when they are sent by family members to work abroad to send remittances back home.

41. The Special Rapporteur is particularly concerned about the situation of unaccompanied and undocumented children on the move and the greater vulnerabilities and risks that they may face, including, but not limited to, discrimination, sexual and other forms of violence, and being coerced into begging, drug dealing or prostitution by criminals or criminal organizations. Cases of children who have been expelled at international borders or held in detention facilities under conditions that endanger their well-being and physical integrity, thus raising humanitarian concerns, have often been brought to the attention of the Special Rapporteur.

42. The Special Rapporteur is also concerned about the higher risk for children in this category of being deported without being granted access to the protection measures to which they are entitled, especially the most vulnerable, such as child victims of the sale of children or trafficking in persons, who, in addition, are often treated like adult irregular migrants.

43. In paragraphs 44 to 51 below, the Special Rapporteur identifies a number of human rights issues of particular concern affecting children on the move, including those who are undocumented and unaccompanied.

44. The Special Rapporteur wishes to highlight the inadequacy of migration-related detention measures for unaccompanied children, in line with the work of the Committee on the Rights of the Child, and encourages States to include alternative measures to detention and to accord priority to such measures in their legislation.

45. The Special Rapporteur also encourages States to develop public policies which ensure the effective enforcement of these alternative measures by the competent authorities, both administrative and judicial. For example, any detention order to be applied to a child should justify the reasons for not applying alternative measures, and the place of detention should be chosen for the child's integral protection, bearing in mind that children should not be detained in prisons or with adults.

46. The Special Rapporteur considers that child protection approaches should be at the core of the goals and functions of detention institutions/centres, and should include the realization of such rights as, inter alia, education, health care, recreation, consular assistance, guardian protection and legal representation. Furthermore, detention centres should be managed by childhood protection officers who have received training on children's rights.

47. The Special Rapporteur recommends that migration officials be trained, including on the rights of the child and cultural sensitivities, and that States ensure that age-assessment processes comply with international standards, which include access to effective remedies to challenge age-assessment decisions. States should also consider ensuring that children are accorded the benefit of the doubt in age-determination procedures.

48. The Special Rapporteur further invites States to develop standardized procedures to ensure access to asylum procedures for unaccompanied migrant children who cannot return to their countries of origin because their lives, safety or

freedom are at risk, and to ensure an assessment of the situation in the country of origin or habitual residence of the children before deciding on their repatriation.

49. The Special Rapporteur encourages the collection of data at the national level and the preparation of studies and research on unaccompanied or separated children, and encourages States to follow the guidance for the protection of the rights of unaccompanied migrant children provided in general comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children.

50. The Special Rapporteur encourages consular services to continue ensuring respect for the rights of the child in the context of the return of migrant children and invites States to conclude bilateral and multilateral agreements based on existing international human rights norms and standards and to increase cooperation at the regional level to protect migrant children, especially those unaccompanied, including in matters relating to safe repatriation, the fight against trafficking, sexual exploitation and smuggling and assistance to victims.

51. The Special Rapporteur encourages the establishment and implementation of institutionalized services and programmes to provide comprehensive support and protection to migrant children, especially those unaccompanied, including the means to detect those who are in need of international protection. Protection services should include access to food, health care and legal advice; support for return to the community of origin; professional and vocational training; and the quest for durable solutions in the case of refugee children. The Special Rapporteur also recommends that protection programmes include reproductive and sexual health awareness and training to address psychological trauma.

4. The situation of children in host countries

52. The Special Rapporteur notes the broad spectrum of situations in which children may be found in host countries. Examples include children of migrant workers, unregistered children from an irregular migrant background, undocumented children who are outside the State of their habitual residence and children who, having been denied the status of refugees, go underground and become irregular migrants.

53. The Special Rapporteur wishes to remind States that child victims of transnational organized crime should not be regarded as criminals or irregular migrants, but as victims entitled to appropriate assistance and measures of protection. Applicable legal instruments, such as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the two protocols supplementing the United Nations Convention against Transnational Organized Crime contain similar provisions, emphasizing that States parties should take appropriate measures to protect the rights and interests of child victims of those practices and adapt procedures that take into consideration their special needs and vulnerabilities.

54. The Special Rapporteur has identified two areas where States should enhance efforts to provide rights-based responses to protect children in host countries. The first area relates to the general protection of children affected by transnational organized crime. The second area relates to the full enjoyment of human rights by children from a migrant background.

55. The first includes "grey areas" relating to the general protection of the child affected by transnational organized crime. For example, the classification of a child as a trafficking victim implies in some instances additional migration obstacles for the child at the border or forced return to his or her place of origin, without taking into consideration the child's view on such return to the country of origin, in proportion to age and maturity, as established by article 12 of the Convention on the Rights of the Child. Furthermore, the criminalization of traffickers is sometimes construed in a way that undermines or diminishes the child's rights, for example, when affording protection to a child victim is conditional on the child's agreement to testify against the traffickers in court.

56. The Special Rapporteur is also concerned about the situation of children born and living in countries to which their mothers have been trafficked, particularly when there is a well-founded fear of reprisals against them by traffickers and when such children are left behind because their mothers are in police custody or detention centres as a result of police or immigration raids.

57. The second area with regard to which host countries should enhance protection relates to children from a migrant background. Children in this category do not necessarily fall under the definition of migrant children, but they are affected by the immigration background of their parents or family members.

58. The Special Rapporteur has identified irregular migration and its criminalization as causes for deep concern in relation to the effective protection of migrant children. When criminalized, irregular migration has proved to be a deterrent to, for example, childbirth registration, because irregular or undocumented migrants usually fear imprisonment and/or deportation and therefore try to avoid all contact with local authorities. Barriers to birth registration and/or its denial have serious consequences for the enjoyment of human rights, including the right to be recognized as a person before the law. Furthermore, States should prevent situations of statelessness, in accordance with article 1 of the Convention on the Reduction of Statelessness.

59. The Special Rapporteur wishes to draw the attention of States to the need to adopt a comprehensive rights-based approach to the management of migration, since migration policies may have a direct impact on the enjoyment of human rights by children. Policies that exclude legal avenues for the regularization of irregular migrants and prohibit the access of irregular (adult) migrants to employment may also have an impact on the standard of living of children. Migration policies should therefore take into consideration the impact that they may have on the enjoyment by migrants of their human rights. In this connection, the Special Rapporteur wishes to highlight the fact that regularization policies constitute a good example of practices aimed at strengthening social integration and cohesion, ensuring the human rights of migrants and attaining State goals such as social security, public health-care coverage and social inclusion. Regularization measures should benefit unaccompanied children and children with their families; they should have the necessary flexibility to improve the social integration of migrants, as well as provide access to fundamental rights, including the right to seek and obtain employment.

B. Good practices

60. In discharging his mandate, the Special Rapporteur has encountered a number of initiatives, activities and policies implemented by Governments and civil society that reflect their commitment to the realization of human rights in the context of migration. The Special Rapporteur wishes to highlight some examples focused on the human rights of migrants, with particular emphasis on the rights of the child; the examples provided are not exhaustive. The Special Rapporteur also believes that it is important to increase efforts to exchange information on the ways in which Governments and international and regional non-governmental organizations around the world are trying to promote respect for the human rights of migrants throughout the migration process with a view to helping States to fill in policy and protection gaps at all levels.

Enhancing cooperation between countries of origin and destination

61. The attention of the Special Rapporteur has been drawn to the migration of health professionals as a serious impediment to the delivery of health-care services to the population in communities characterized by high levels of migration, which in some countries of origin also affects the provision of health-care services to children. In this connection, the Special Rapporteur welcomes efforts made by some host countries to transform migration challenges for countries of origin into opportunities for cooperation. A good example is the Migration and Development for Africa pilot project, launched by the Helsinki office of the International Organization for Migration with the support of the Ministry of Foreign Affairs of Finland, which promotes the return of qualified professionals of Somali background on a temporary basis to Somaliland and Puntland to assist and share their skills with local health authorities, civil society organizations, hospitals and universities.

62. The Special Rapporteur has also been informed about bilateral efforts to promote learning of the heritage language in host countries among migrant children and children from a migrant background, as in the case of States members of the European Union, where such bilateral agreements are envisaged under directive 77/486/CEE. The Special Rapporteur welcomes such initiatives.

Enhancing cooperation between countries of origin and diaspora communities

63. The Special Rapporteur welcomes the efforts and initiatives of countries of origin to enhance cooperation with diaspora communities, as in the case of Ethiopia, where, in 2008, the Government established the Ethiopian Expatriate Affairs Direction and the Diaspora Coordination Offices within the Ministry of Foreign Affairs and the Ministry of Capacity-Building, respectively, with a view to enhancing protection for the Ethiopian diaspora community.

64. The Special Rapporteur also praises efforts made by Governments to promote the contribution of skilled emigrants in the development of their country of origin, as in the case of Albania, where an online "brain-gain" database has been implemented with the support of the United Nations Development Programme to allow skilled emigrants to contribute in various domains, including, but not limited to, academia and the private sector.

Raising prospective migrants' awareness of human rights

65. The Special Rapporteur welcomes joint efforts implemented by Governments, civil society and intergovernmental organizations to provide assistance and information to prospective migrants. Such is the case in Colombia, where, in Bogotá in December 2008, the first assistance and information centre for international migrants was opened with the aim of promoting regulated and dignified migration through the provision of information and technical advice, including on the rights of migrants and protection options available within and outside Colombia. The Centre is part of a pilot project managed by the International Organization for Migration and the General Labour Confederation, with the support of the Ministry of Social Protection.

Strengthening the role of national human rights institutions in the protection of the human rights of migrants

66. The Special Rapporteur welcomes the significant increase in efforts undertaken by national human rights institutions to protect the human rights of migrants, as in the case of the region of Asia and the Pacific, where a regional plan of action for such institutions has been put in place aimed at ensuring cooperation with a view to ending impunity for trafficking in persons. Special focal points and units dedicated to migration, refugees and displacement have also been established within national human rights institutions.

67. The Special Rapporteur praises the initiative undertaken in 2008 by national human rights institutions in Asia, led by the national human rights institutions of the Republic of Korea, to develop a number of guidelines, inter alia, to ensure the protection of migrants' rights in multicultural societies, including strategies such as campaigning for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; developing and strengthening remedies to address human rights violations committed against migrants, in particular against those who are undocumented or in an irregular situation. The Special Rapporteur also welcomes the initiative of national human rights institutions in Indonesia, Malaysia, Thailand and the Philippines to launch a joint research project to examine the main concerns of migrant workers in the region with a view to making appropriate recommendations to Governments.

Access to health care regardless of immigration status

68. The Special Rapporteur has been informed of some progress made in the protection of migrant children, particularly in relation to the extension of health coverage and care services, regardless of the immigration status of those concerned. The Special Rapporteur on the right to health has documented a good practice in Sweden, where undocumented children receive health-care assistance on the same basis as resident children.

69. The Special Rapporteur also welcomes the fact that some States in the Latin American region, in particular Uruguay (law 18.250, art. 9) and Argentina (law 25.871, art. 7), have prohibited the denial of health-care services on the grounds of irregular migration status.

Equality in access to education for migrant children

70. The Special Rapporteur also welcomes the efforts of host countries to improve equality in access to education for migrant children. This is the case in a number of developed countries, including Japan, where migrant children, regardless of their immigration status, are allowed to enrol in public schools free of charge. It is also the case Uruguay (law 18.250, art. 11) and Argentina (law 25.871, art. 8).

Including the protection of children left behind in laws, policies and programmes

71. The Special Rapporteur praises the initiatives of some States to include the protection of children left behind by migrating family members in national laws, policies and programmes. A good example is the case of Romania, where, in response to calls from non-governmental organizations, the mass media and local authorities, the National Authority for the Protection of Children's Rights launched a process to identify and constantly monitor children whose parents had gone to work abroad after 2006. Furthermore, by order No. 219 of 2006, local authorities are responsible for identifying cases of children left behind, and parents who go abroad on employment contracts have an obligation to notify local authorities of their intention to leave and tell them who will be in charge of caring for the children.

Including migrant children in early childhood services

72. The Special Rapporteur commends efforts undertaken by a number of countries belonging to the Organization for Economic Cooperation and Development, including Germany and Canada, to ensure that migrant children benefit from early childhood services aimed at developing children's capacities in general, while also addressing specific issues, such as command of language among children who have little opportunity to speak the local language in their families or neighbourhoods.

C. Main challenges

73. The following paragraphs outline some of the observations and recommendations of the Special Rapporteur with respect to some of the main human rights challenges in the context of migration, with particular emphasis on the protection of children.

Combating discrimination, xenophobia and related intolerance against migrants

74. The Special Rapporteur wishes to draw attention to the interconnection between xenophobic and racist attacks against migrants and their non-national status. In many cases, there are no legal channels for migration, which leads to irregular migration and often produces anti-migrant responses within society. The increase of such responses as a result of the global financial crisis should be considered as a warning that xenophobic outbreaks may be on the rise.

75. The Special Rapporteur also wants to draw attention to the problem of discrimination, which in some instances arises when conditions of labour migration involve situations of abuse, not only by groups and individuals connected with organized crime who sell identity papers to potential migrants, but also by

employers who, in order to avoid social security payments or taxes in their countries, hire undocumented workers, termed "illegal" by the immigration authorities. The victim is thus criminalized or otherwise penalized, while the traffickers and the employers take advantage of the lack of legal, social and economic protection for undocumented workers and remain unpunished.

76. The Special Rapporteur recalls the need for a serious and in-depth approach to combat racism, racial discrimination, xenophobia and related intolerance, which are having a negative effect on the enjoyment of human rights by migrants. Furthermore, the Special Rapporteur encourages Governments, in particular in countries of transit and destination, to promote greater harmony, tolerance and respect among migrants, asylum-seekers, refugees and the rest of society, with a view to eliminating acts of racism, xenophobia and other forms of related intolerance directed against migrants.

77. The Special Rapporteur also call upon States to consider implementing the Durban Declaration and Programme of Action, as well as the outcome document of the Durban Review Conference.

The criminalization of irregular migration

78. The Special Rapporteur observes that a number of countries still consider breach of migration law to be a criminal offence (for example in cases of irregular entry, lack of a residence permit, the use of an expired residence authorization or unauthorized re-entry after a deportation and re-entry prohibition decision) and is deeply concerned about the resulting detrimental impact, in particular on children, since in most countries migration laws lack a children's rights perspective. For this reason, the Special Rapporteur wishes to stress that the criminalization of irregular migration leads to human rights violations, and recalls previous recommendations that he has made on this issue encouraging States to view irregular migration as an administrative rather than a criminal offence, reversing the trend towards greater criminalization.

79. The Special Rapporteur wishes to highlight the fact that the criminalization of undocumented migrants for the offence of being in a country without proper papers makes them vulnerable to potential racist or xenophobic acts in the societies of the countries involved. Society distorts their situation, regarding them as "delinquents", and is quick to connect them with organized crime, including drug trafficking and robbery. Their undocumented status makes many migrants vulnerable to the point of becoming easy prey for criminal networks.

80. The Special Rapporteur wishes to draw the attention of the General Assembly and international society in general to the danger of such reactions, not only for migrants, but also for migrants' societies of destination, in which the patterns of individual and group behaviour being established will have a negative impact on their children's upbringing, as xenophobic models are handed down by adults and discriminatory sectors of society. The Special Rapporteur therefore suggests that States that still punish irregular migration with imprisonment revise and reform their migration laws and decriminalize irregular migration.

Sustainable return and reintegration

81. The Special Rapporteur highlights the importance of ensuring the reintegration of migrants who return to their countries, either voluntarily or involuntarily, and encourages the design and implementation of programmes for the sustainable return and reintegration of children, including alternatives to return on the basis of the best interests of the child.

82. The Special Rapporteur suggests that reintegration programmes take into account the social and human aspect of migration, including the psychological effects of uprooting, the difficulties of reinsertion in the labour market and problems linked to the existence of debt in the country of origin, and recommends the development of comprehensive reintegration programmes involving migrants, their families, Governments and civil society at large.

83. The Special Rapporteur encourages Governments to increase efforts to implement registration systems for their migrating citizens and to monitor their return. That in turn would help in monitoring the situation of children left behind and make it possible to assess the problems faced by returnees and to develop appropriate strategies to facilitate their social and economic integration.

Deportation of children

84. The Special Rapporteur is concerned about the protection of the human rights of children who are subject to deportation and wishes to insist on the importance of respecting the best interests of the child in such procedures.

85. The Special Rapporteur invites States to give consideration to the principle of non-deportation of unaccompanied children, whereby children should be repatriated only if it is in their best interests, namely, for the purpose of family reunification and after due process of law. The Special Rapporteur notes that the enforcement of this principle would require public policies and a legal framework in both the country of origin and that of destination. In this regard, the Special Rapporteur regrets that the recently adopted European Union return directive (2008/115/EC) authorizes the deportation of children migrants in the same sense as adults (art. 10), despite some specific protection measures. No distinction is made regarding the nature of the deportation, which in both cases is a "punitive approach" instead of a "protection approach", as stressed by the Committee on the Rights of the Child and other human rights institutions and mechanisms at the global and regional levels.

86. The Special Rapporteur also wishes to emphasize that mechanisms are also needed to ensure children's rights and perspectives within the deportation procedures of their parents (based on their migration status), especially their right to be heard. While States tend to consider the rights of the adults involved in such procedures (including the right to the family unit), there is no specific mechanism that considers the rights of their children.

Migration-related detention of children

87. Migration-related detention of children should not be justified on the basis of maintaining the family unit (for example, detention of children with their parents when all are irregular migrants). As the United Nations Children's Fund and other experts have stressed, detaining children will never be in their best interests. Hence, the ideal utilization of a rights-based approach would imply adopting alternative

measures for the entire family; States should therefore develop policies for placing the entire family in locations alternative to closed detention centres.

88. Some countries make distinctions among children (for instance, children above 12 years of age) with regard to detention policy. In such cases, children over 12 years of age are detained in detention centres, while those under 12 are placed in protection centres for children. Such a practice should be considered an unlawful interpretation of article 1 of the Convention on the Rights of the Child. Furthermore, adolescents should not be treated as adults.

Double victimization of trafficked persons

89. The Special Rapporteur observes with regret that in some instances victims of trafficking in persons, especially women and children, face double victimization. The Special Rapporteur has received information about persons being trafficked and then charged with illegal entry or the forging of documentation, disregarding their condition as victims of transnational organized crime.

90. The Special Rapporteur wishes to emphasize that States should provide assistance to victims of trafficking irrespective of their cooperation in relation with judicial proceedings, and invites States to strengthen efforts to improve victim identification processes and the corresponding referral mechanisms, including referral to asylum-seeking systems, where appropriate.

91. The Special Rapporteur encourages States to ensure the application of international standards and a human rights-based approach to victim protection, taking into account a gender perspective and the special needs of children. A human rights-based approach to victim protection should include, inter alia, access to a range of assistance services, the granting of a reflection period, access to compensation, the possibility of temporary or permanent residency and the non-liability of victims for involvement in unlawful activities as a result of being trafficked.

IV. Conclusions and recommendations

92. **Ensuring that all migrants, regardless of their immigration status, enjoy their internationally recognized human rights at all stages of the migration process should be the guiding principle of migration governance. Despite the progress made, much remains to be done to ensure the enjoyment by migrants of their human rights.**

93. **As discussed throughout the present report, there are a number of issues of concern that warrant further attention, cooperative effort and protection-sensitive and human rights-tailored responses. In the light of the foregoing, the Special Rapporteur wishes to put forth a number of general recommendations for further consideration and action.**

94. **States should effectively promote and protect the human rights and fundamental freedoms of all migrants, in particular those of women and children, regardless of their immigration status, in conformity with the Charter of the United Nations and international human rights standards.**

95. **States that have not yet done so should incorporate the applicable legal frameworks on human rights, the protection of the child, the protection of migrant workers and their families, the protection of asylum-seekers and refugees, the fight against transnational organized crime and the elimination of contemporary forms of slavery into their national laws and policies, as well as into their bilateral and regional agreements for migration management.**

96. **States should review their national and regional laws and policies to harmonize them with the international legal framework on the protection of the human rights of migrants, with particular attention to the protection of the rights of the child. Immigration laws and policies should include concrete regulations aimed at protecting the rights of the child in the context of migration and fulfilling their specific needs in migration-related circumstances.**

97. **States should ensure the protection of the child in all migration-related circumstances, regardless of the immigration status of the child or his or her family, and take into account the best interests of the child as a primary consideration in all migration-related initiatives and actions concerning children at all levels.**

98. **States are encouraged to consider the impact of migration on children in the elaboration and implementation of national development frameworks, poverty reduction strategies, human rights action plans, and programmes and strategies for human rights education and the advancement of the rights of the child.**

99. **States are also encouraged to adopt and develop programmes and policies to address significant gaps remaining in social policies and other areas where the protection of the human rights of migrants in general, and the protection of migrant children in particular, has yet to be mainstreamed.**

100. **In the context of the current economic crisis, States should pay particular attention to preventing human rights abuses against migrants and avoid unreasonable restrictions on labour migration. All stakeholders need to continue to make a serious effort to put an end to violations of migrants' human rights and to show their determination to resolve the issue.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of and assistance to internally displaced persons

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, in accordance with General Assembly resolution 62/153 and Human Rights Council resolution 6/32.

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Report of the Representative of the Secretary-General on the human rights of internally displaced persons

Summary

The present report provides a brief overview of the current situation of internal displacement and discusses the nexus between climate change and internal displacement. It also outlines the approach of the Representative to his mandate and his activities in the period from August 2008 to July 2009.

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I. Introduction

1. The present report is presented by the Representative of the Secretary-General on the human rights of internally displaced persons in accordance with General Assembly resolution 62/153 and Human Rights Council resolution 6/32.

2. Following a brief overview of the current situation of internal displacement and a discussion of the nexus between climate change and internal displacement, the report outlines the approach of the Representative to his mandate and his activities in the period from August 2008 to July 2009.

II. The current situation of internal displacement

3. At the beginning of 2009, the number of persons internally displaced as a result of armed conflict, generalized violence or human rights violations across the world stood at approximately 26 million.[1] Reported returns of about 2.6 million people in 2008, particularly in the Central African Republic, Côte d'Ivoire, the Democratic Republic of the Congo, Georgia, Iraq, Kenya, the Philippines, Sri Lanka, the Sudan, Timor-Leste, Uganda and Yemen, were outweighed by the new internal displacement of about 4.6 million people during the same period. New internal displacement was reported mainly from the Philippines (600,000 persons), the Sudan (550,000), Kenya (500,000), the Democratic Republic of the Congo (at least 400,000), Iraq (360,000), Pakistan (over 310,000), Somalia (300,000), Colombia (270,000), Sri Lanka (230,000), India (over 220,000) and Georgia (128,000).

4. The first half of 2009 has seen more internal displacement, particularly in Sri Lanka, with almost 300,000 persons displaced during the course of the Sri Lankan army's operation against the Liberation Tigers of Tamil Eelam, and in Pakistan with up to 2 million persons[2] displaced in the context of armed operations against Taliban militants in the north-west of the country. New internal displacement linked to generalized violence, conflict and in some cases also serious violations of international humanitarian law were reported from a number of other places, including (in alphabetical order) the Central African Republic, Colombia, the Democratic Republic of the Congo, the Occupied Palestinian Territory,[3] the Philippines, Somalia and the Sudan.

5. The Representative is concerned about the situations of internally displaced persons in protracted displacement, where the process to find durable solutions has stalled and the displaced are marginalized by disregard for or failure to protect their human rights, in particular economic, social and cultural rights. At present, some 35 countries have significant numbers of internally displaced persons living in protracted situations.[4] The phenomenon affects Europe in particular, where 99 per

[1] The figures in this paragraph are according to the Internal Displacement Monitoring Centre, Internal displacement: global overview of trends and developments in 2008 (April 2009), p. 9. They are also available at: http://www.internal-displacement.org/.

[2] Office for the Coordination of Humanitarian Affairs Pakistan situation report, 17 July 2009.

[3] See the Representative's contribution to the combined report of nine special procedures pursuant to resolution S-9/1 (2009) on the situation in the Occupied Palestinian Territory (A/HRC/10/22), paras. 80-88.

[4] Internal Displacement Monitoring Centre, idem.

cent of the continent's 2.5 million internally displaced persons fled their homes some 15 to 35 years ago as a result of conflicts arising from rejected independence claims, activities of armed non-State actors and territorial disputes.

6. In addition to those displaced by conflict and violence, an estimated 36 million persons were displaced in 2008 worldwide as a result of natural disasters, but reliable figures do not exist in the absence of an agreed methodology and global system to record displacement that is not related to conflict.

7. In many cases, internal displacement is not inevitable, but States fail to protect persons in their countries with due diligence from the consequences of armed conflict, natural hazards or violence carried out by armed non-State actors. In some cases, arbitrary displacement also results from a failure of State actors to scrupulously respect human rights and international humanitarian law and related impunity for individual perpetrators. Persons facing multiple, intersecting layers of discrimination are often particularly vulnerable to arbitrary displacement and it is no coincidence that ethnic minorities, and in some countries, indigenous peoples, are among the main groups affected by internal displacement.

8. Internally displaced persons often face serious protection challenges. Attacks on internally displaced person sites and individual internally displaced persons, including sexual violence, and the forced recruitment of displaced children into armed groups, are among the most serious concerns. Other challenges may appear less grave, but can still impose considerable hardship on internally displaced persons. For instance, legal requirements with regard to documentation or residence that may be acceptable for non-displaced persons often create insurmountable obstacles for internally displaced persons and cut off their access to key goods and services guaranteed by human rights, such as health, education, property, participation in public affairs, etc.

9. The Representative is encouraged by the fact that an increasing number of States are deciding to address the challenges of internal displacement through specific laws and policies. Regional organizations are increasingly pressing member States to adopt such laws and policies, which is another positive trend. The development in Africa is particularly noteworthy. The member States of the International Conference of the Great Lakes Region have already adopted a Protocol on the Protection and Assistance to Internally Displaced Persons, which entered into force in June 2008 and, with the accession of the Sudan, has nine State parties. The African Union plans to hold a Special Summit on Refugees, Returnees and internally displaced persons in Africa, where heads of State and Government gathered in Kampala, from 18 to 23 October 2009, will hopefully adopt the African Union Convention for the protection and assistance of internally displaced persons in Africa. In Europe, the Parliamentary Assembly of the Council of Europe recently adopted its important resolution 1877 (2009) entitled "Europe's forgotten people: protecting the human rights of long-term displaced persons".[5]

[5] Provisional edition available at: http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/EREC1877.htm.

III. Climate change and displacement

10. Even though global warming and the ensuing changes of climate as such do not trigger movement of persons, its effects have the potential to do so. The most recent findings of the Intergovernmental Panel on Climate Change[6] indicate that frequency and magnitude of climate-related disasters, such as flooding, hurricanes, desertification or even the "sinking" of stretches of land, are likely to increase as a consequence of global warming, and thus will displace an ever-increasing number of persons.

11. It is believed that, due to the effects of climate change, between 50 and 250 million people[7] may move by the middle of the century, either within their countries or across borders, on a permanent or temporary basis. While some of these movements will be voluntary, for example, triggered by the prospect of finding a better life in areas not negatively affected by the impacts of climate change as part of a strategy of communities, families and individuals to adapt to the effects of changing climate, many will be forced to leave their homes, whether due to the sudden-onset hydro-meteorological disasters or the slow-onset environmental degradation. The majority of the affected populations are likely to remain within the borders of their country of origin and, consequently, are considered internally displaced persons.

12. The many millions forcibly displaced by the effects of climate change will require substantial protection and humanitarian assistance because displacement creates specific new, or exacerbates pre-existing, vulnerabilities. The specific needs of persons affected by climate change have to be addressed to prevent arbitrary displacement, to protect their rights during displacement and to find durable solutions to their displacement. However, the experience of the past years indicates that sudden-onset disasters or environmental degradation not only displace an increasing number of persons, but all too often, insufficient attention is paid to the multiple human rights challenges they may face during displacement. More often than not, these human rights consequences are a result of inadequate or inefficient policies, due to a lack of awareness of States and of humanitarian and human rights actors.

13. Particular human rights challenges for the displaced as well as for the authorities concerned also arise in the context of evacuations before and during disasters, relocations because return to the original place of residence is not possible or too dangerous and, more generally, the search for durable solutions for those among the displaced who cannot return and resume their normal lives in the immediate aftermath of a disaster.

14. These observations led the Representative to review relevant existing legal frameworks and to identify typical human rights protection challenges which persons displaced or at risk of displacement due to the effects of climate change may face. Through the Inter-Agency Standing Committee, the Representative contributed to providing conceptual clarity for the humanitarian community on the

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[6] See the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) "Climate Change 2007" available at: http://www.ipcc.ch/ipccreports/assessments-reports.htm.

[7] In the First Assessment Report of IPCC (1990), it was noted that the greatest single impact of climate change might be on human migration and it was estimated that by 2050, 150 million people could be displaced by climate change-related phenomena, such as desertification, increasing water scarcity, and floods and storms. More recent studies refer to estimates for the same period of 200 million (Stern Review 2006) and 250 million (Christian Aid (2007), *Human tide: the real migration crisis*).

normative frameworks applicable for the protection of those displaced by the effects of climate change and guidance on how to address these typical protection challenges.[8]

15. In cooperation with the Inter-Agency Standing Committee members, the Representative remains engaged with State parties to the United Nations Framework Convention on Climate Change, in order to inform their negotiations for a new framework that shall be adopted in December 2010 in Copenhagen and that will replace the Convention-related Kyoto Protocol which will expire in 2012, on the humanitarian consequences of global warming, including issues related to internal displacement.

16. Based on the Representative's typology on climate change-related displacement scenarios and his gap analysis of normative frameworks to protect persons displaced by the effects of climate change,[9] three joint papers on climate change, displacement and migration were submitted to the secretariat of the Convention.[10] The following paragraphs provide a detailed summary of the Representative's observations and highlight some human rights challenges that might be faced by persons displaced by the effects of climate change, in particular in the context of evacuations and relocations, and when seeking durable solutions in the aftermath of a disaster.

A. Normative framework to protect persons displaced by the effects of climate change

17. Persons who are forced to leave their homes or place of habitual residence due to the effects of climate change and remain within their country are internally displaced persons.[11] The normative framework for their protection are the Guiding

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[8] Representative of the Secretary-General on the human rights of internally displaced persons (2008), *Displacement caused by the Effects of Climate Change: Who will be affected and what are the gaps in the normative frameworks for their protection?* Background paper submitted to the Inter-Agency Standing Committee Working Group at its 71st meeting held from 18 to 20 June 2008 and available at: http://www2.ohchr.org/english/issues/climatechange/submissions.htm.

[9] Ibid.

[10] Technical paper on "Climate Change, Migration and Displacement: Who will be affected?" submitted by the informal group on Migration/Displacement and Climate Change of the Inter-Agency Standing Committee on 31 October 2008 (http://unfccc.int/resource/docs/2008/smsn/igo/022.pdf); and submissions "Climate change, migration and displacement: impacts, vulnerability and adaptation options" by the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations University (UNU), in cooperation with the National Research Council and the Representative, dated 6 February 2009 (http://unfccc.int/resource/docs/2008/smsn/igo/031.pdf) as well as "Forced Displacement in the context of Climate change" by UNHCR in cooperation with the Representative and UNU dated 19 May 2009 (http://unfccc.int/resource/docs/2009/smsn/igo/049.pdf) to the United Nations Framework Convention on Climate Change secretariat.

[11] Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex), 1998: "[...], internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border" (para. 2).

Principles on Internal Displacement which outline their specific rights inherent in and derived from international human rights and humanitarian laws. The Guiding Principles have been recognized by the international community as an important international framework for the protection of internally displaced persons that is applicable to any type of internal displacement, regardless of its cause.

18. The Guiding Principles stress that States bear the primary duty and responsibility to provide assistance and protection in all phases of internal displacement (principle 3), namely, to prevent displacement, to protect persons displaced by the effects of climate change and to find durable solutions for the displaced, in particular, those who cannot be allowed or expected to return to their homes or places of habitual residence considered too dangerous for inhabitation.[12]

19. Consequently, there is no normative gap, as such, to address internal displacement related to the impact of climate change. States should adhere to the Guiding Principles and strengthen their implementation when addressing internal displacement in this context.

20. However, with regard to slow-onset disasters and environmental degradation, there is a lack of criteria to distinguish clearly between voluntary population movements and forced displacement. In particular, in the context of gradual environmental degradation, some of the movement could be considered voluntary, for example, triggered by the prospect of finding a better life in areas not affected by extreme weather events, and thus be part of adaptation strategies. In other cases, however, a clearer element of coercion, including threats to life, health, property and livelihood, exists. Arguably, if a person would lack access to basic human rights protection as a consequence of an extreme weather event in the area of origin, and therefore cannot reasonably be expected to return, the person should be considered a victim of internal displacement and consequently should qualify for heightened assistance and protection in accordance with the Guiding Principles.

21. The Representative further observed that persons moving across an international border due to environmental factors would be entitled to general human rights guarantees in a receiving State, but would often not have a right of entry to that State. In particular, where persons are forcibly displaced across an international border, there is a major normative gap.

22. Unless the Government has consciously withheld or obstructed assistance in order to punish or marginalize them on one of the five grounds specified in the 1951 Convention related to the Status of Refugees, these persons are unlikely to qualify as refugees. Consequently, the terms "environmental refugee" and "climate refugee" have no legal basis in international refugee law and are to be avoided in order not to undermine the international legal regime for the protection of refugees;[13] they are equally inappropriate for those displaced within their country.

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[12] General Assembly resolutions 60/1, para. 132; 60/168, para. 8; 62/153, para. 10, and Human Rights Council resolution 6/32, para. 6 (c).

[13] See technical paper on "Climate change, migration and displacement: who will be affected?" submitted by the informal group on Migration/Displacement and Climate Change of the Inter-Agency Standing Committee on 31 October 2008 to the United Nations Framework Convention on Climate Change secretariat (available at: http://unfccc.int/resource/docs/2008/smsn/igo/022.pdf).

23. The Representative is of the opinion that the risk of a vastly increasing number of persons forcibly displaced by the effects of climate change justifies recognition of responses to such displacement and its human rights and humanitarian consequences as measures necessary to adapt to climate change and to include them in the post-Kyoto instrument on climate change into the catalogue of adaptation measures.

B. Human rights challenges to protect internally displaced persons in the context of climate change: evacuations, prohibition of return, permanent relocations and durable solutions

24. Among the human rights problems faced by persons displaced by natural disasters[14] and the effects of climate change, the issue of forced evacuations and relocations is a particularly challenging one.

25. On the one hand, taking measures to reduce the effects of natural hazards on people is part of States' obligations under international human rights law. While States cannot be held responsible for disasters that occur, the right to life and other relevant human rights create positive obligations on States to take appropriate steps to safeguard the life, limb and property of those within their jurisdiction against the threats of disasters. If a disaster is foreseeable and the State is able to prevent ensuing threats to the life and property of persons, it has to take appropriate action in conformity with its human rights obligations under the right to life.[15] Failure of the State to protect the lives of its citizens would amount to a human rights violation if competent authorities knew or should have known about the danger and had the capacity to take life-saving measures. The duty to take life-saving measures to protect the right to life of its people may include the need to temporarily evacuate people or to relocate them from danger zones and prohibit them from returning to their homes as long as their safety and life would be at risk.

26. On the other hand, persons displaced or at risk of displacement by the effects of climate change enjoy freedom of movement, including the right to opt freely to return to their homes, to settle elsewhere in the country or to locally integrate at the place of displacement. The general rule is that States have a duty to respect such decisions. Persons should be provided with true and accurate information enabling them to make a free and voluntary decision.

27. Where a person agrees to be evacuated or relocated, the two human rights obligations go hand in hand. Tensions arise when people oppose such measures, even though authorities consider them necessary to protect their lives. Under international law, forced evacuations and relocations are not absolutely prohibited. Rather, the right to freedom of movement can be limited under certain strict conditions by the State in order to take life-saving measures. In doing so, the following generic requirements must be adhered to:

- Ensuring that a legal basis exists for the limitation of the freedom of movement through evacuation, relocation or prohibition of return. Such law

[14] For an extended discussion of this topic, see the report of the Representatives to the Human Rights Council on protection of internally displaced persons in situations of natural disasters, A/HRC/10/13/Add.1 (2009).

[15] European Court of Human Rights, *Budayeva and others v. Russia*, judgement of 20 March 2008.

has to be accessible, in particular, in areas of implementation and needs to be understandable for the people concerned. This enhances transparency and foreseeability and allows persons to prepare themselves for such events;

- Ensuring that the actual evacuation, relocation or prohibition of return serves exclusively the goal of protecting the safety of the persons concerned; and
- Ensuring that the evacuation, relocation or prohibition of return is necessary and proportional to this end and only resorted to if there are no other less intrusive measures.

Thus, whenever possible, the free consent of persons concerned must be sought before ordering such measures. Evacuations must not last any longer than absolutely necessary. In cases of permanent relocations, return can only be prohibited in very exceptional cases in which the area of return is indeed one with high and persistent risks for life or security, the remaining resources are inadequate for survival of returnees, the enjoyment of basic human rights cannot be guaranteed, all other available adaptation measures are exhausted, and the situation in the area of return can no longer be alleviated by protective measures.

28. Furthermore, any evacuations, prohibition of return and permanent relocations need to be carried out without discrimination and the only permissible distinctions are those made in order to take into account special protection needs.

29. Finding durable solutions for internally displaced persons remains crucial whether or not they could exercise their right to choose freely among the three durable solutions (return, local integration or settlement elsewhere in the country). The achievement of such solutions is a process through which the need for specialized assistance and protection gradually diminishes until an internally displaced person no longer has specific needs that are directly linked to his or her having been displaced.

30. States must act to make solutions sustainable. Some universal principles that facilitate the establishment of conditions which allow for durable solutions for internally displaced persons can be summarized as follows:

Information on the process, consultation with and participation of the affected communities. These measures help internally displaced persons to make a free and voluntary decision on whether to return, integrate locally where they had been displaced or evacuated to, or to relocate and integrate elsewhere in the country. In the case where return is not an option, forced relocations, which have a tendency not to be sustainable, should be avoided; rather, affected populations should be empowered with a sense of ownership of the process of finding a solution to their situation. Information has to be true and accurate, consultation processes truly representative and participation inclusive and possible from the very beginning.

Safety. Return areas as well as relocation sites should be safe from effects of secondary hazards and recurrent disasters and should thus be selected after a careful analysis and risk mapping have been undertaken jointly with the affected population.

Recovery of land and property upon return, including through settlement of property and land disputes. All internally displaced persons should have access to mechanisms for property restitution or compensation, whether or not they opt for return or another durable solution. In the case of prohibition of return, affected

persons must be provided with alternative housing and land or sufficient means to acquire such land and housing and with compensation for lost and damaged property in the case of arbitrary displacement.

Physical needs and livelihoods. Provision of proper housing and services, such as health care or education, is essential and continued access to livelihoods is critical. If access to former livelihoods is not possible, the creation of new livelihood opportunities is vital.

IV. Mandate and activities of the Representative of the Secretary-General

A. The mandate of the Representative

31. Paragraph 6 of Human Rights Council resolution 6/32 defines the following key objectives of the Representative's mandate:

- Address the complex problem of internal displacement, in particular by mainstreaming human rights of the internally displaced persons in all relevant parts of the United Nations system;
- Work towards strengthening the international response to the complex problem of situations of internal displacement and engage in coordinated international advocacy and action for improving protection and respect of the human rights of the internally displaced, while continuing and enhancing dialogue with Governments, non-governmental organizations and other relevant actors.

32. Working within his mandate, which will be up for renewal by the Human Rights Council in 2010, has allowed the Representative to make significant contributions to shaping the international framework on internal displacement that evolves around the Guiding Principles and, in close cooperation with member States, international organizations and other stakeholders, to tangibly improve the protection of the human rights situation of internally displaced persons in several cases.

33. Internal displacement is a multifaceted challenge. Effectively addressing it and ensuring that internally displaced persons enjoy their human rights requires activity on different fronts, namely, human rights promotion and protection, humanitarian action, recovery and development, peacebuilding and political activities. In accordance with his mandate, the Representative promotes a rights-based approach to internal displacement on the basis of a constructive dialogue with Governments and through extensive mainstreaming activities within the United Nations and regional organizations, in order to address the different angles of internal displacement with a view to improving the conditions of the displaced, preventing additional displacement and encouraging durable solutions. A rights-based approach distinguishes between right holder and duty bearer. It defines the responsibility of Governments on the basis of specific obligations under international law and ensures that internally displaced persons are seen as individuals with rights, rather than the object of charity. Human rights also provide legal obligations, benchmarks and principles relevant for the provision of humanitarian assistance to internally displaced persons for their reintegration through durable solutions and for their participation in political processes.

34. The mainstreaming aspect of the mandate, as well as the access and resources at his disposal to implement it, are essential to the work of the Representative. The nature of his mandate, situated at the heart of the United Nations system (as also indicated by its title), has allowed the Representative to benefit from privileged access, broad support and durable partnerships with United Nations institutions, member States and other stakeholders. Distinguishing features include the participation of the Representative in the Inter-Agency Standing Committee, the primary coordination mechanism for humanitarian assistance provided by United Nations and other humanitarian actors. The Representative is a standing invitee to the meetings of the Committee, which is the central forum of the wider humanitarian community for information exchange and policy development, and he regularly participates in meetings at the principal level. The Representative's participation in the Standing Committee is crucial to ensure that humanitarian policies take into account displacement concerns and to promote the human rights of internally displaced persons within the humanitarian community. The Committee is also the primary forum for the dissemination and promotion within the humanitarian community of policy guidance developed by the Representative.

35. The comprehensive humanitarian reform undertaken by the United Nations in 2005 has led to the establishment of global clusters that bring together United Nations and other key non-State humanitarian actors, develop policy guidance and support clusters at the national level to ensure a timely and effective humanitarian response. The Representative participates in the global clusters on protection and early recovery through his support staff. This participation ensures that responses to situations of internal displacement benefit from the expertise of the Representative, while he draws on the cluster expertise in the development of his own policy guidance tools.

36. The Representative has concluded memorandums of understanding with the Office for the Coordination of Humanitarian Affairs and the Office of the United Nations High Commissioner for Refugees (UNHCR). These memorandums not only improve the flow of information and exchange of expertise, but also allow the Representative to place support staff in both offices, which adds to the staff support he receives from the Office of the United Nations High Commissioner for Human Rights (OHCHR). UNHCR and Office for the Coordination of Humanitarian Affairs are key humanitarian actors in the United Nations system dealing with internal displacement and the coordination of related humanitarian assistance. The close interaction at the working level allows the Representative to introduce the human rights of internally displaced persons directly into the work of these organizations both at a policy and operational level. On the basis of their close cooperation at headquarters, OHCHR, UNHCR and the Office for the Coordination of Humanitarian Affairs work as partners, thereby allowing the Representative to carry out a substantial number of official fact-finding missions, follow-up visits, working visits and other initiatives. This inter-agency cooperation, which combines the complementary strengths of the different agencies, also improves the monitoring and follow-up to country-specific recommendations made by the Representative and ensures integration in regular programming.

B. Country missions

37. Between August 2008 and July 2009, the Representative of the Secretary-General conducted country missions to Chad, the Democratic Republic of the Congo and Georgia, at the invitation of the respective Governments.

38. The Representative's repeated requests to carry out missions to the Philippines and to the Sudan in 2009 had unfortunately not yet resulted in invitations from the Governments concerned at the time the present report was finalized. The Representative wishes to underscore that he remains interested in carrying out missions to both countries at the earliest convenience. In the light of the dramatic displacement situation in Somalia, where an estimated 1.3 million persons remain internally displaced as a result of serious human rights violations, armed conflict and violence, the Representative also hopes to carry out a visit to that country during the remainder of 2009. In addition, the Representative envisaged visiting Pakistan and remains committed to engaging with the Government to ensure adequate support and protection of all persons of concern to his mandate in Pakistan.

1. Georgia

39. In the aftermath of the South Ossetia conflict, the Representative visited Georgia from 1 to 4 October 2008.[16] As a result of the hostilities that escalated on 7 and 8 August 2008, some 133,000 persons became displaced within Georgia. A large majority were able to return to the Shida Karli region and areas adjacent to the administrative border with the Tskhinvali region/South Ossetia until the end of 2008. Their main needs related to the challenge of recovery after return, including safety (such as humanitarian mine clearance) and the re-establishment of law and order. The reconstruction and repair of destroyed or looted houses, humanitarian assistance, and the re-establishment of basic services, such as education and health, were important concerns, as was the resumption of economic activities.

40. Government estimates of November 2008 indicated that 37,605 internally displaced persons would not return in the foreseeable future. The Representative commended the Government for its decision to provide housing for those internally displaced persons. However, he was concerned about the almost exclusive emphasis on the provision of infrastructure, and recommended that the Government develop a comprehensive integration policy with responses to the specific needs of internally displaced persons based on the whole range of their civil, cultural, economic, political and social rights.

41. The biggest challenge remained the integration of the approximately 220,000 internally displaced persons who have been living in protracted displacement for more than a decade. The Representative reiterated that no distinction should be made between this "old" generation and the "new" generation of internally displaced persons in the provision of protection and assistance.

42. The Representative acknowledges with appreciation that since his visit, the Government has adopted an action plan to improve, in particular, the housing conditions of those internally displaced persons in protracted displacement who still live in collective centres.

[16] For more details, see A/HRC/10/13, paras. 38-43, and A/HRC/10/13/Add.2.

43. Despite repeated requests, the Representative was unable to visit the Tskhinvali region/South Ossetia.

2. Democratic Republic of the Congo

44. The Human Rights Council, in its resolutions 7/20 and S-8/1, invited seven United Nations independent experts, including the Representative, to make recommendations on how best to assist technically the Democratic Republic of the Congo in addressing the situation of human rights, with a view to obtaining tangible improvements on the ground, taking also into account the needs formulated by the Government. The Council also underlined the need to examine urgently the current human rights situation in the east of the country, in particular, as it regards violence against women. The Representative, on behalf of the group of seven experts, carried out a visit to the Democratic Republic of the Congo from 17 to 23 January 2009, during which he held meetings with the Prime Minister and other senior officials in Kinshasa. He visited Goma (North Kivu), where he met with provincial authorities, United Nations representatives, non-governmental organizations, internally displaced persons and women survivors of sexual violence.

45. On the basis of their dialogue with the Government and other information gathered, the seven independent experts presented a report to the Human Rights Council with the finding that the general human rights situation in the Democratic Republic of the Congo remained a cause for serious concern and that it had further deteriorated since the adoption of resolution 7/20 by the Council.[17] The experts found that in the east of the country, in particular, systematic and gross violations of the human rights of civilians and grave breaches of international humanitarian law, were taking place. They specifically highlighted concerns relating to forced and arbitrary displacement, the effect of the humanitarian crisis on economic, social and cultural rights, violence against women and girls, the situation of human rights defenders and the impact of the armed conflict on children in the eastern Democratic Republic of the Congo. Impunity, the existence of non-State armed actors, the present weaknesses of the security and justice sectors, the illegal exploitation of natural resources, the political instrumentalization of ethnic cleavages and the lack of equality between men and women were root causes of human rights-related concerns.

46. Based on their assessment of the situation, the seven thematic special procedures formulated eight priority objectives and identified technical assistance needs in that regard:

1. Fighting impunity and strengthening the law enforcement and justice sectors;
2. Reforming the security sector;
3. Preventing the (re-)recruitment of children by armed groups and socially reintegrating children associated with armed groups;
4. Protecting women's rights and ensuring gender equality;
5. Addressing economic root causes of human rights violations;
6. Protecting the rights of the displaced persons and minorities;

[17] See A/HRC/10/59, summary and sect. II.

7. Providing access to health care, especially for marginalized groups;

8. Strengthening State and civil society structures to protect and promote human rights.[18]

47. The Representative remains committed to working with the Government of the Democratic Republic of the Congo on the basis of resolution 10/33 (2009) of the Human Rights Council, which extended the mandate of the seven experts and requested that a follow-up report be submitted to it at the thirteenth session of the Council (March 2010). From the perspective of the Representative's mandate, the Government should prioritize the adoption of a law and policy on internal displacement, establish local land commissions to resolve destabilizing land conflicts between returnees and others, create a human rights vetting mechanism for security sector officers and implement other measures proposed in the report that would help to end serious human rights violations and grave breaches of international humanitarian law, which create more displacement.

3. Chad

48. From 3 to 9 February 2009, the Representative carried out an official mission to the Republic of Chad.[19]

49. Between December 2005 and the end of 2007, large numbers of people in the eastern part of Chad were displaced, mainly because of attacks by the Janjaweed across the border from Darfur. Today, tensions between different communities, exacerbated by competition for access to limited resources, including water and arable land, growing bandit activity and clashes between the Chadian armed forces, and rebel groups, continue to keep many Chadians away from their villages in the region bordering the Sudan. About 160,000 Chadians were internally displaced when the present report was finalized. The Dar Sila and Ouaddaï regions in the east have been particularly affected.

50. The Representative is concerned about the recruitment of displaced children and instances of gender-based violence at internally displaced person sites, and the high level of crime that occurs with complete impunity and which is perpetrated against internally displaced persons as well as humanitarian actors. The Government of Chad needs to do everything necessary to restore and reinforce without delay a State presence at all levels in the areas affected by displacement, in particular a judicial system, a police presence and basic services, such as education, health care and economic reintegration. Mechanisms for conflict resolution and reconciliation among local communities also need to be strengthened.

51. Long-lasting displacement is a huge burden on host families and tensions arise between the displaced and their host communities, mainly over natural resources. While a few displaced persons decided to return spontaneously, despite the precarious security conditions and the lack of access to basic services in areas of return, the conditions to sustain these returns are not yet in place. In this context, it is important to strengthen early recovery efforts aimed at creating the necessary conditions for achieving durable solutions and to provide displaced persons with a

[18] Ibid., sect. III.

[19] See A/HRC/10/13/Add.4.

voluntary choice as to whether they want to integrate at the place of refuge or elsewhere in the country, or return to their place of origin.

52. The Representative is convinced that, without a domestic peace process in Chad which brings the Government, representatives of the different Chadian communities and the political as well as armed opposition groups together in political dialogue, and in the absence of a settlement to the conflict in Darfur, the situation in the east of the country might deteriorate at any time, creating further waves of displaced persons. In close cooperation with the United Nations Development Programme (UNDP) and the Office for the Coordination of Humanitarian Affairs, the Representative intends to conduct a seminar later in 2009 for Government officials to discuss the creation of a recovery plan for the east of the country that would take into account the specific needs of internally displaced persons living in such a volatile security environment.

C. Working visits and follow-up activities

53. The Representative also conducted a number of visits to follow up on previous missions and working visits to provide technical advice to Governments and United Nations country teams. Between September and December 2008, he carried out follow-up visits to Colombia, Sri Lanka and Timor-Leste.[20] In 2009, he visited the Central African Republic, the Republic of Serbia, including a visit to Kosovo, Sri Lanka and Uganda.

1. Central African Republic

54. During his working visit to the Central African Republic (10-12 February 2009), the Representative noted substantial progress made since his official mission in 2007,[21] with the conclusion of an inclusive political dialogue and several peace agreements signed in 2008, the amnesty law and the formation of a new Government in early 2009. While those developments had paved the way for internally displaced persons to return, no large-scale return had taken place thus far and those who returned often did so under unsatisfactory conditions.

55. The Representative remains concerned about the precarious conditions of those who remain in displacement as a result of the conflict, as well as violent acts committed by criminal elements with complete impunity. The absence of a legislative framework for addressing displacement issues, as well as the lack of capacity of the Government to act were identified as important reasons for the ongoing problems encountered by internally displaced persons. The adoption of a law and a strategy on internal displacement covering all phases of displacement would be an important first step and the recent formation of an inter-ministerial taskforce for this purpose is an encouraging development.

56. Finding durable solutions for displaced populations is an important element of peacebuilding in the Central African Republic. The Representative submitted a number of recommendations to the country-specific configuration of the Peacebuilding Commission on how to incorporate displacement specific concerns

[20] See the reports on these visits in A/HRC/10/13, paras. 52-56 (Colombia), paras. 65-68 (Sri Lanka) and 69-70 (Timor-Leste).

[21] A/HRC/8/6/Add.1

into the peacebuilding framework. The Strategic Framework for Peacebuilding in the Central African Republic[22] reflects many of his recommendations, including the obligations under the protocols of the International Conference of the Great Lakes Region and the need to develop a comprehensive legal framework and strategy for internal displacement.

57. In a letter to the Government dated 20 May 2009, the Representative conveyed allegations and concerns regarding the conduct of hostilities during clashes between Government forces and armed rebel groups in the Central African Republic that were causing new displacement.

2. Sri Lanka

58. After his mission in December 2007 and his short visit in September 2008 for the National Consultations on Durable Solutions, the Representative returned to Sri Lanka for a working visit from 2 to 6 April 2009 to discuss with Government officials the situation of the displaced persons who had come out of the conflict zone in the north-east of the country. He visited the Omanthai Checkpoint and met with internally displaced persons at transit sites and camps in Vavunyia, including Menik Farm.

59. The Representative welcomes the continuation of the frank and constructive dialogue with the Government of Sri Lanka. He recognizes the efforts made by the Government, which has affirmed its fundamental responsibility to protect and assist internally displaced persons, as well as the substantial challenges faced by the Government in meeting those assumed obligations.

60. The Representative raised fundamental concerns with the Government. In particular, he stressed that the civilian character of the camps must be maintained and access of humanitarian agencies further facilitated in order to cooperate with the Government in meeting the humanitarian needs of the displaced population. He also emphasized the urgent need for a transparent procedure and criteria for screening internally displaced persons in accordance with international standards to allow for freedom of movement and release of displaced persons from the camps. The Representative recalled that Principle 12.2 of the Guiding Principles on Internal Displacement, which are based on international legal standards, provided that internally displaced persons "shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances".

61. The Government reassured the Representative at that time that all necessary measures would be undertaken to facilitate prompt and sustainable return. The National Consultations on Durable Solutions in 2008 were an important step in the efforts of the country and could be used to help identify and facilitate the conditions necessary for sustainable solutions to displacement.

62. On 15 May 2009, the Representative issued a press statement expressing his extreme concern about civilians being forced to stay in the conflict zone in Sri Lanka, as well as the continued internment of internally displaced persons in camps. He underscored that such prolonged internment would not only amount to arbitrary detention, but that it also aggravated the dire humanitarian situation

[22] PBC/3/CAF/L.1.

needlessly. The Representative further specified his concerns in a letter shared with the Government prior to the release of the statement.

63. The Representative welcomed the Government's stated intention to devise an action plan endorsing fundamental principles and indicating clear benchmarks, criteria and timetables for screening displaced persons, registering them, enhancing their freedom of movement and facilitating their return, and indicated his readiness to support the Government and the international community in their attempts to solve the current displacement crisis. When the present report was finalized, the Representative was not aware that an action plan addressing the above-mentioned issues had in fact been developed. As of 10 July 2009, a total of 278,051 internally displaced persons from the Vanni were still interned in camps and 4,329 were in hospitals, compared to only 5,483 internally displaced persons who had been released.[23]

64. The Representative underscores the urgency of proceeding with the development and implementation of an action plan and stands ready to support the Government and the international community in efforts to resolve the current displacement crisis and protect the rights of the displaced in accordance with international standards.

3. Serbia, including a visit to Kosovo[24]

65. From 28 June to 4 July the Representative carried out a visit in follow-up to a mission he had undertaken in 2005 to then Serbia and Montenegro.[25] During the course of the visit, the Representative met with internally displaced persons in Belgrade, Kraljevo, Pristina, Mitrovica/Mitrovicë and other locations, and was able to have an open and constructive dialogue with senior officials of the Government of Serbia, the Special Representative of the Secretary-General in Kosovo and other international actors, as well as the Kosovo authorities, including the President of Kosovo.

66. Many of the 200,000 persons initially registered as internally displaced from or within Kosovo in 1999 and subsequent years have yet to find a durable solution. The vast majority are persons of Serb ethnicity, although the Representative also met some internally displaced persons of Albanian ethnicity awaiting their return to northern Kosovo. In addition, there are several tens of thousands of Roma, Ashkali and Egyptian ethnicity who were internally displaced. They often remain in particularly difficult situations, not least since they formed part of a minority often living on the margins of society even before their displacement.

67. Only several thousand internally displaced persons have returned to or within Kosovo and it is uncertain how many returns have proven to be sustainable. The Representative noted with appreciation the stated commitment of all relevant authorities to allow and facilitate returns of internally displaced persons, regardless of their ethnicity. However, entrenched patterns of discrimination, lack of access to

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[23] Office for the Coordination of Humanitarian Affairs, Vanni internally displaced person situation (10 July 2009).

[24] Any reference to Kosovo, whether to the territory institutions or population is to be understood in accordance with Security Council resolution 1244 (1999) and the United Nations position of strict neutrality on the status of Kosovo.

[25] E/CN.4/2006/71/Add.5.

employment and livelihoods, too few schools for minorities and difficulties in repossessing property and having houses reconstructed still constitute chief obstacles to return. At the time of the Representative's visit, close to 800 internally displaced families had registered to return to or within Kosovo in 2009. This return programme is an important test case that will show whether the relevant authorities, including municipalities in return areas, are willing to accept and facilitate returns.

68. The Representative underscored that improved living conditions for internally displaced persons and their return at a later stage were not mutually exclusive, but that persons who had been able to re-establish a normal life in displacement and who then decided to return were far more likely to make their return sustainable. He notes with appreciation some improvements in the integration of internally displaced persons in Serbia. Programmes have started to help internally displaced persons to leave run-down collective centres and move to their own houses or flats and build livelihoods. However, bureaucratic obstacles, in particular cumbersome procedures for obtaining documents, continue to make it unnecessarily difficult for many internally displaced persons to access public services. Roma internally displaced persons who are not registered or lack an officially recognized address because they live in irregular settlements, face particularly grave deprivations of their economic, social and cultural rights.

69. The Representative is alarmed that several hundred Roma, Ashkali and Egyptian internally displaced persons are still living in camps in Northern Mitrovica/Mitrovicë in the immediate vicinity of toxic waste from a former lead mine that has been poisoning their blood for 10 years. In particular, internally displaced children are in a very critical health condition and the lead concentration in their blood far exceeds medically acceptable levels. The Representative calls upon all actors, national and international, to cooperate in a pragmatic manner and find, without any further delay, a durable solution at a safe and healthy location within Kosovo in close consultation with the group.

4. Uganda

70. From 13 to 17 July 2009, the Representative visited Uganda, following up on an earlier visit in 2006. During his field visit to the Acholi subregion, the Representative witnessed the impressive progress made in addressing the displacement situation, with the majority of the former 1.8 million internally displaced persons having left the camps and moved to transit sites close to their former homes or back to their villages. In particular, he commended the Government for its commitment to finding durable solutions for all the displaced persons and welcomed the progress made in restoring security and freedom of movement in northern Uganda.

71. Despite these positive developments, serious challenges remain. The Representative was concerned about the low impact of recovery and development activities in the north, in particular, with regard to the establishment of basic services, such as water, food, health or education, in return areas. This, as well as disputes over land and property hamper return movements and their sustainability. The Representative welcomed the Government's commitment to implement the Peace, Recovery and Development Plan without further delay and stressed its importance. He also called upon the international community to support and complement recovery efforts.

72. The food insecurity present at the time of the visit posed an additional risk to returning communities who already struggle to adapt to their new lives after a very long period in displacement. The Representative recommended to authorities and development partners that they undertake measures to restore long-term food security, in order to adapt to the challenges of changing climate patterns.

73. Finding durable solutions for extremely vulnerable individuals among the displaced population, in particular, those left behind in camps without support from their families, is the biggest remaining humanitarian challenge. The Representative calls for concerted efforts of returnee communities, local authorities and humanitarian agencies to reintegrate these individuals into their communities.

D. Cooperation with regional and international organizations

1. Inter-Parliamentary Union

74. On 9 April 2009, the Representative addressed the plenary of the 120th Assembly meeting of the Inter-Parliamentary Union held in Addis Ababa, with the general theme "Parliaments: building peace, democracy and development in times of crisis". The Representative stressed that national parliaments and their members played a key role in addressing the challenge of internal displacement. In affected countries, parliaments should contribute to recognizing and protecting the rights of internally displaced persons by highlighting their situation, incorporating those rights into domestic law through appropriate legislation, calling the executive branch of Government to account if it was taking the necessary action, and by lobbying for and approving the necessary budget allocations. Even parliaments in countries without armed conflict could take such steps, given the fact that every country could suddenly and unexpectedly be faced with displacement caused by natural or man-made disasters. Parliaments in donor countries should help to secure the much needed funds for emergency assistance and return programmes.

2. Council of Europe

75. On 24 June 2009, the Representative addressed the Parliamentary Assembly of the Council of Europe on the occasion of a general debate on long-term internal displacement, at the conclusion of which the Assembly adopted resolution 1877 (2009) on long-term displaced persons.[26] In his presentation, the Representative called upon member States of the Council of Europe to find new impetus to peacefully settle protracted conflicts in Europe, providing internally displaced persons with a voice in the peace processes and crafting peace agreements that addressed the rights, needs and interests of internally displaced persons. Insisting on their citizens' rights to return should not prevent Governments from improving the living conditions of the displaced and facilitating other durable solutions, namely local integration, especially if the political realities precluded returns in the foreseeable future. The Representative also called upon member States of the Council to review, enact and fully implement national laws, strategies and action plans that aimed at restoring the human rights of people in internal displacement, in accordance with Committee of Ministers recommendation (2006)06, the Guiding Principles, and binding human rights law.

[26] See, supra, para. 9.

76. The Representative highlighted the fact that, in Europe, poor housing, lack of employment opportunities and the absence of access to quality education were typically the dominant concerns, both during protracted displacement and after return. Protection of property left behind and, ultimately, its restitution or compensation, were often ignored, hindering internally displaced persons in their efforts to resume their lives and remaining a serious source of grievance and a trigger-point for future conflict.

3. International Conference of the Great Lakes Region

77. On 9 and 10 July 2009, the International Conference of the Great Lakes Region Executive Secretariat, together with the Representative, the Office for the Coordination of Humanitarian Affairs, OHCHR, the Internal Displacement Monitoring Centre and the Brookings-Berne Project on Internal Displacement, conducted a workshop on the implementation of the Protocol on the Protection and Assistance to Internally Displaced Persons which obliges States to incorporate the Guiding Principles into their domestic law and the Protocol on the Property Rights of Returning Persons to the Pact on Security, Stability and Development in the Great Lakes Region, which came into force in June 2008.

78. Burundi, the Central African Republic, the Democratic Republic of the Congo, Kenya, the Republic of the Congo, Rwanda, Uganda, the United Republic of Tanzania and Zambia participated with delegations that were led by the national coordinator of the International Conference of the Great Lakes Region process and included expert officials from relevant line ministries. The Government of South Sudan also sent an expert delegate. Austria and Switzerland, as members of the Group of Friends to the Great Lakes Process and key supporters of the workshop, participated as observer States alongside representatives of civil society and international organizations.

79. On the basis of expert presentations and an exchange of lessons learned in group work, the representatives of member States of the International Conference of the Great Lakes Region developed and adopted concrete recommendations for implementing the above-mentioned protocols on the protection of internally displaced persons and the property of returnees. The Representative is committed to working with individual International Conference of the Great Lakes Region member States on the basis of their legal duties and the follow-up recommendations to help in the development of national laws and policies.

E. Capacity-building and other activities

1. Guide for mediators on internal displacement

80. Finding durable solutions for the displaced is an important element of a successful peace process. The return of internally displaced populations is often used as a benchmark against which progress in post-conflict stabilization and peacebuilding is measured. Durable solutions, whether on the basis of return, local integration or settlement elsewhere in the country, can best be achieved if issues related to internal displacement are addressed in peace agreements. Internally displaced persons seldom have a voice in a peace process. Therefore, it is even more important for mediators to be aware of the relevant issues pertaining to internal

displacement and to be equipped to facilitate their integration into peace agreements.

81. The Representative therefore developed, in close cooperation with the Mediation Support Unit of the Department for Political Affairs and a group of experts in mediation and/or internal displacement, a guide for mediators on internal displacement. Consultations on a draft were held in Geneva and New York in late 2008, both with the humanitarian and mediation community as well as with Member States. The guide will be published in late 2009 by the United States Institute for Peace and the Brookings-Bern Project on Internal Displacement.

82. The guide provides advice on how to engage internally displaced persons in the different phases of a peace process and on the key displacement-specific issues that should be addressed in the text of peace agreements.

2. Central America and Asia natural disaster workshops

83. Together with the Brookings-Bern Project on Internal Displacement, the Representative continued the series of capacity-building workshops on protection in natural disasters, with two workshops held in Guatemala City and Bangkok. The goals of the workshops were to raise awareness on protection challenges in natural disaster situations, to develop strategies to strengthen protection and to cover protection gaps, building on the Inter-Agency Standing Committee Operational Guidelines on Human Rights and National Disasters.

84. In Guatemala, a regional workshop was held on 28 and 29 May 2009 with participants from El Salvador, Guatemala, Honduras, and Nicaragua. Participants were from both the human rights and the humanitarian sectors, including representatives from national Governments, the United Nations, the Red Cross and non-governmental organizations, as well as human rights actors from the Ombudsmen's offices. Participants not only developed a better understanding of protection in natural disasters, but also formulated concrete recommendations on how to strengthen the cooperation between human rights and humanitarian actors to address protection issues. They also developed a series of proposals on the integration of a rights-based approach to emergency relief into the regional strategic framework 2009-2011 developed by the regional coordination structure of the civil defence organizations.

85. In coordination with the Regional Office of the Office for the Coordination of Humanitarian Affairs for Asia and the Pacific, a regional workshop was held in Bangkok on 18 and 19 June 2009, with 53 participants from 13 different countries. The workshop focused on protection challenges in natural disasters, while emphasizing the prevention and response to discrimination and other human rights concerns. The workshop not only provided the opportunity to share knowledge and experience, but also motivated participants to incorporate and mainstream protection in natural disasters into their programming.

86. An additional workshop organized by the Brookings-Bern Project on Internal Displacement with participants from seven Asian countries was held on 9 and 10 April 2009 in Chennai, India.

F. Mainstreaming of the human rights of internally displaced persons in the United Nations system

1. Inter-Agency Standing Committee and global clusters

87. As noted above, the Representative and his staff participate at all levels of the Inter-Agency Standing Committee and the global clusters on protection and early recovery.

88. Within the Standing Committee, the Representative put an emphasis on the humanitarian implications of climate change during 2008. His contributions were central to the clarification of terminology and identification of legal gaps in the context of displacement caused by the effects of climate change. He co-authored three submissions to the United Nations Framework Convention on Climate Change secretariat on this topic and participated in an Inter-Agency Standing Committee-led side event at the climate change talks held in Bonn in June.

89. The Representative is also engaged in the global protection cluster working group and the cluster working group on early recovery. In close cooperation with both clusters and in close cooperation with UNDP and UNHCR as cluster lead agencies, the Representative has launched a process to revise the framework on durable solutions for internally displaced persons, a document setting out the basic tenets of how and under what conditions durable solutions can be achieved. Agencies and non-governmental organizations represented in both clusters are actively engaged in the process. The Representative expects to present the document to the Inter-Agency Standing Committee by the end of 2009 and will also share it with the Human Rights Council as an annex to his next report.

2. Office of the United Nations High Commissioner for Human Rights

90. In accordance with the request of the Human Rights Council, OHCHR provides support to the Representative and helps to ensure that his work and that of other special procedures of the Human Rights Council complement each other.

91. The Representative, the Brookings-Bern Project on Internal Displacement, the International Institute of Humanitarian Law in San Remo and OHCHR co-organized once again the annual course on the law of internal displacement to train high-level officials from different parts of the world. In addition, the Representative participated in a workshop, co-organized by OHCHR and the Brookings-Bern Project on Internal Displacement, on the role of African national human rights institutions in protecting the human rights of internally displaced persons in Nairobi.

3. Office for the Coordination of Humanitarian Affairs

92. The Representative worked closely with the Office for the Coordination of Humanitarian Affairs and the Under-Secretary-General for Humanitarian Affairs on specific country situations, such as those in Sri Lanka or Uganda. The Regional Office in Bangkok was the local partner for a regional workshop on protection in natural disasters, which was held on 18 and 19 June. The Office continues to provide logistical and other support for some of the Representative's country visits.

93. The Representative contributed to the development of the Global Advocacy Campaign on Internal Displacement, which was launched in December 2008 in New York and in March 2009 at Geneva.

94. The Office for the Coordination of Humanitarian Affairs developed new training for humanitarian coordinators on the use of legal frameworks in humanitarian coordination. The Representative made substantial contributions to the training material on the law on internal displacement and gave a lecture at the training session held in Turin on 25 June.

4. Office of the United Nations High Commissioner for Refugees

95. The relationship with UNHCR has grown increasingly productive and reflexive over the years. The Representative has supported the mainstreaming of internally displaced person protection by UNHCR through, for example, participating in its senior management learning programme on internally displaced persons.

96. The Representative continues to collaborate with country operations as follow-up to his missions and visits. He also welcomed the opportunity to consult actively with and serve as a resource to UNHCR headquarters and country operations, upon request.

5. Peacebuilding Commission

97. After previous engagement at the policy level, the Representative started to work with the Peacebuilding Commission on a concrete country situation, namely, the Central African Republic. While the Peacebuilding Commission was developing its Strategic Framework for the Central African Republic, the Representative visited the country in February. He made concrete proposals to the chairperson of the country-specific configuration of the Peacebuilding Commission and the Peacebuilding Support Office on how internal displacement could best be addressed in the Strategic Framework for the Central African Republic. The strategic framework that was approved by the Peacebuilding Commission on 6 May 2009 takes many of his recommendations into account.

6. Joint United Nations Programme on HIV/AIDS

98. The Representative had the opportunity to participate in the Joint United Nations Programme on HIV/AIDS (UNAIDS) Coordination Board Meeting of 22 June 2009, dedicated to the theme "People on the move: forced displacement and migrant populations" and gave a presentation on HIV/AIDS and the protection of the rights of internally displaced persons. His presentation stressed three issues: (a) prevention of and protection against HIV transmission in the context of being displaced and during displacement, particularly in camps; (b) non-discriminatory access of internally displaced persons to essential HIV prevention, treatment, care and support services with sufficient regard for privacy and confidentiality of their health-related data; and (c) non-discriminatory access of internally displaced persons with HIV/AIDS to other essential goods and services, in particular, food, water and sanitation, and shelter.

V. Conclusions and recommendations

99. **Internal displacement continues to be one of the world's major humanitarian and human rights challenges and many internally displaced persons experience serious violations of their human rights. It is important to**

translate the increasing recognition of the human rights dimension of internal displacement at the international and regional levels into effective action to protect the human rights of internally displaced persons at the national and local levels. This requires coherent laws and policies, capable coordination and implementation mechanisms and adequate financial and human resources. More needs to be done to mobilize political will and improve national frameworks to prevent internal displacement and protect the human rights of internally displaced persons. The Representative recommends that member States:

- Protect persons from internal displacement related to conflict or other violence by scrupulously adhering to their obligations under international human rights law and international humanitarian law, in particular, the obligation not to arbitrarily displace persons emerging from the two bodies of law;

- Exercise due diligence in protecting persons from violence and resulting arbitrary displacement by armed non-State actors, including criminal groups, while upholding other human rights obligations;

- Criminalize arbitrary displacement, at least to the extent that it amounts to international crimes, and bring all perpetrators to justice, regardless of their affiliation or rank;

- Protect persons from disaster-induced internal displacement and its consequences by adopting and implementing disaster-management laws, policies and mechanisms to protect persons from natural hazards, mitigate the negative effects of natural disasters and protect persons during and after natural disasters;

- Enhance the protection of displaced persons by adopting laws and policies on internal displacement that outline the specific duties of national actors, assign responsibilities among State institutions and establish adequate funding mechanisms. Laws and policies should be based on the Guiding Principles, which are consistent with and reflect international law;

- Establish processes and conditions to ensure that internally displaced persons can find a durable solution of their choice: return in safety and dignity and successful reintegration, successful local integration where they currently are or settlement or relocation elsewhere in the country and successful integration there. In this context, it is important that internally displaced persons have the opportunity to participate in the political processes that affect them and, in particular, that the voices of internally displaced persons are heard in peace processes and that peace agreements reflect the rights, needs and interests of internally displaced persons.

100. The nexus between the effects of climate change and internal displacement becomes increasingly apparent and there is a fear of more internal displacement in coming decades, although there is by no means a linear and monocausal relationship between both phenomena. The Representative commends the growing recognition by Member States that there is a clear link between the effects of climate change and displacement and, in accordance with the Guiding Principles, of their obligations to address internal displacement in this context.

101. At the same time, the Representative recognizes the nexus between poverty and natural disaster, the negative impact of which will be reinforced, as climate change is largely expected to affect the most those States that have least contributed to it. The Representative recommends that States closely cooperate to address this challenge. Developed countries should provide resources and expertise to assist the least developed countries in their efforts to adapt also to the human consequences of climate change, to protect persons displaced by the effects of climate change and to find durable solutions for displaced persons.

102. The Representative strongly encourages States to continue their engagement on these issues in the ongoing United Nations Framework Convention on Climate Change negotiations. The new international instrument that will hopefully emerge from these negotiations will be the cornerstone document for any major initiative related to climate change in the years to come. It is therefore of the utmost importance that the post-Kyoto instrument on climate change recognize the problem of displacement related to the effects of climate change and include adequate responses into the catalogue of adaptation measures.